STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004

Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

Legislative History – Montana Session Law

Chapter: 537 Session L: 2021
Bill Number: HB 553

Checklist of Bill History

- History and Final Status Sheet ☑
- Introduced Bill ☑
- Fiscal Note ☑
- Third Reading Bill ☐
- Final Version of Bill ☐

House	Senate
Committee: (1) Judiciary (2) Appropriations	Committee: (1) Judiciary (2) Finance & Claims
Hearing Date(s): (1) 02/24/2021 (2) 03/01/2021	Hearing Date(s): (1) 04/09/2021 (2) 04/15/2021
Committee Report: (1) 02/24/2021 (2) 03/01/2021	Committee Report: (1) 04/09/2021 (2) 04/15/2021

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 04/18/2025

Notes: Audio/Video recordings can be found here:
https://sg001-harmony.sliq.net/00309/Harmony/en

Thank you!

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/14/21	Chapter Number Assigned				
05/14/21	(H) Signed by Governor				
05/04/21	(H) Transmitted to Governor				
05/04/21	(S) Signed by President				
05/04/21	(H) Signed by Speaker				
05/02/21	(C) Printed - Enrolled Version Available				
05/02/21	(H) Returned from Enrolling				
04/26/21	(H) Sent to Enrolling				
04/26/21	(H) 3rd Reading Passed as Amended by Senate		98	0	
04/26/21	(H) Scheduled for 3rd Reading				
04/23/21	(H) 2nd Reading Senate Amendments Concurred		97	3	
04/23/21	(H) Scheduled for 2nd Reading				
04/20/21	(S) Returned to House with Amendments				
04/20/21	(S) 3rd Reading Concurred		49	0	
04/20/21	(S) Scheduled for 3rd Reading				
04/15/21	(S) Committee Report--Bill Concurred	(S) Finance and Claims			
04/15/21	(S) Committee Executive Action--Bill Concurred	(S) Finance and Claims	19	0	
04/15/21	(S) Hearing	(S) Finance and Claims			
04/14/21	(S) Rereferred to Committee	(S) Finance and Claims			
04/14/21	(S) 2nd Reading Concurred		50	0	
04/14/21	(S) Scheduled for 2nd Reading				
04/13/21	(C) Printed - New Version Available				
04/12/21	(S) Committee Report--Bill Concurred as Amended	(S) Judiciary			
04/09/21	(S) Committee Executive Action--Bill Concurred as Amended	(S) Judiciary	11	0	
04/09/21	(S) Hearing	(S) Judiciary			
03/23/21	(C) Amendments Available				
03/10/21	(H) Revised Fiscal Note Printed				
03/10/21	(H) Revised Fiscal Note Signed				
03/09/21	(H) Revised Fiscal Note Received				
03/08/21	(S) Referred to Committee	(S) Judiciary			

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
03/08/21	(S) First Reading				
03/02/21	(H) Transmitted to Senate				
03/02/21	(H) 3rd Reading Passed		99	0	
03/02/21	(H) Scheduled for 3rd Reading				
03/01/21	(H) Committee Report--Bill Passed	(H) Appropriations			
03/01/21	(H) Committee Executive Action--Bill Passed	(H) Appropriations	24	0	
03/01/21	(H) Hearing	(H) Appropriations			
03/01/21	(H) Rereferred to Committee	(H) Appropriations			
03/01/21	(H) 2nd Reading Passed		99	1	
03/01/21	(H) Scheduled for 2nd Reading				
02/27/21	(H) Committee Report--Bill Passed	(H) Judiciary			
02/26/21	(H) Fiscal Note Printed				
02/26/21	(H) Fiscal Note Signed				
02/26/21	(H) Fiscal Note Received				
02/24/21	(H) Committee Executive Action--Bill Passed	(H) Judiciary	19	0	
02/24/21	(H) Hearing	(H) Judiciary			
02/23/21	(H) First Reading				
02/23/21	(H) Referred to Committee	(H) Judiciary			
02/22/21	(C) Introduced Bill Text Available Electronically				
02/22/21	(H) Fiscal Note Requested				
02/22/21	(H) Introduced				
02/22/21	(C) Draft Delivered to Requester				
02/22/21	(C) Draft Ready for Delivery				
02/20/21	(C) Executive Director Final Review				
02/20/21	(C) Draft Ready for Delivery				
02/19/21	(C) Draft in Assembly				
02/19/21	(C) Executive Director Review				
02/19/21	(C) Bill Draft Text Available Electronically				
02/19/21	(C) Draft in Final Drafter Review				
02/18/21	(C) Draft in Input/Proofing				
02/18/21	(C) Draft to Drafter - Edit Review				
02/16/21	(C) Draft in Edit				
02/16/21	(C) Draft in Legal Review				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/15/21	(C) Draft to Requester for Review				
01/23/21	(C) Draft Request Received				

AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

(i) (A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

(ii) (C) 15 years for a violent offender, as defined in 46-23-502, and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106;

(iii) (D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(iv) (E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an

offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Coordination instruction. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

Section 5. Applicability. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

HB 553, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2021.

_____

President of the Senate

Signed this _____day

of_____, 2021.

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	HB0553	Title:	Limit time of suspended sentences for felony convictions
Primary Sponsor:	Patelis, Jimmy	Status:	As Introduced

☐Significant Local Gov Impact ☒Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	($1,462,755)	($491,034)	($526,124)	($563,334)
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$1,462,755	$491,034	$526,124	$563,334

Description of fiscal impact: HB 553 amends 46-18-201, MCA, by limiting the length of a suspended sentence imposed by a court. This bill would impact the Department of Corrections (DOC) by requiring an immediate review of all sentences currently being served on probation to determine if the offender would be entitled to early termination. If passed, this could potentially reduce the number of offenders serving time on probation. The Office of Public Defender (OPD) represents individuals on direct appeal and in a variety of constitutional and statutorily required civil actions. OPD with the passage of this legislation anticipates a reduction in required counsel.

FISCAL ANALYSIS

Assumptions:

1. The bill adds language that a sentencing judge may not suspend execution of sentence.... in a manner that would result in an offender being supervised in the community... for a period of time longer than" 20 years for a sexual offender, 15 years for a violent offender, 10 years for offender convicted of certain drug crimes "or 5 years for all other felony offenses."

Department of Corrections (DOC)

2. At this time, the DOC IT department was able to preliminarily identify 1,256 offenders who would qualify for termination in the next four fiscal years per the proposed language.

3. HB 553 would be applied retroactively to sentences imposed prior to passage when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the DOC than allowed under HB 553.

Office of Public Defender (OPD)

4. OPD assumes there may be a decrease of approximately 10% for petitions to revoke cases over the next four years, or approximately 210 per year based on the number of cases received in FY 2020.
   a. OPD received 2,104 district court or felony revocations cases in FY 2020.
5. The agency estimates a reduction of approximately 1,470 hours of attorney work time per year.
   a. OPD currently weights defense of a felony revocation at a minimum of seven hours of attorney case time. (210 x 7 = 1,470 hours)
6. Savings to the agency are estimated at $100,666 per fiscal year.
   a. OPD current hourly rate is $68.48, established during the FY 2019 performance audit. (1,470 x $68.48 = $100,666).
   b. A 1.5% inflation factor is applied in fiscal years 2024 and 2025.

Fiscal Impact:	**FY 2022 Difference**	**FY 2023 Difference**	**FY 2024 Difference**	**FY 2025 Difference**
Expenditures:				
DOC Operating Expenses	($1,362,089)	($390,368)	($423,948)	($459,626)
OPD Operating Expenses	($100,666)	($100,666)	($102,176)	($103,708)
TOTAL Expenditures	($1,462,755)	($491,034)	($526,124)	($563,334)
Funding of Expenditures:				
General Fund (01)	($1,462,755)	($491,034)	($526,124)	($563,334)
TOTAL Funding of Exp.	($1,462,755)	($491,034)	($526,124)	($563,334)
Revenues:				
General Fund (01)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$1,462,755	$491,034	$526,124	$563,334

Long-Term Impacts:

1. Long-term the passage of this bill has the potential to continue the reduction of persons supervised by the DOC.

Jenny Pettit 2-26-21
Sponsor's Initials *Date*

KA
Budget Director's Initials

2/26/21
Date

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	HB0553	Title:	Limit time of suspended sentences for felony convictions
Primary Sponsor:	Patelis, Jimmy	Status:	As Introduced-Revised

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	($503,626)	($491,034)	($526,124)	($563,334)
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$503,626	$491,034	$526,124	$563,334

Description of fiscal impact: HB 553 amends 46-18-201, MCA, by limiting the length of a suspended sentence imposed by a court. If passed, this bill would impact the Department of Corrections (DOC) by requiring an immediate review of all sentences currently being served on probation to determine if the offender would be entitled to early termination. If passed, this could reduce the number of offenders serving time on probation.

FISCAL ANALYSIS

Assumptions:

1. The bill adds language that a sentencing judge may not suspend execution of sentence.... in a manner that would result in an offender being supervised in the community... for a period of time longer than" 20 years for a sexual offender, 15 years for a violent offender, 10 years for offender convicted of certain drug crimes "or 5 years for all other felony offenses."

Department of Corrections (DOC)

2. At this time the DOC IT department was able to preliminarily identify 1,256 offenders who would qualify for termination in the next four fiscal years per the proposed language.
3. HB 553 would be applied retroactively to sentences imposed prior to passage when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the DOC than allowed under HB 553. Due to retroactive applicability of this bill the impact in the first fiscal year following passage of the bill would be significant. However, the rapid discharge of sentences would quickly taper off to a normal

level that would sustain the current case load of DOC Probation and Parole officers, new convictions not included. The first year does not include those cases from FY 2003 – FY 2021 as it would skew the average number of offenders this bill would affect in each year.

4. An average of 200 offenders would be released from supervision each year. There are approximately 149 P&P Officers that carry an offender caseload. This bill would reduce each officer's caseload by one offender each year.

Office of Public Defender (OPD)

5. OPD assumes there may be a decrease of approximately 10% for petitions to revoke cases over the next four years, or approximately 210 per year based on the number of cases received in FY 2020.
   a. OPD received 2,104 district court or felony revocations cases in FY 2020.
6. The agency estimates a reduction of approximately 1,470 hours of attorney work time per year.
   a. OPD currently weights defense of a felony revocation at a minimum of seven hours of attorney case time. (210 x 7 = 1,470 hours)
7. Savings to the agency are estimated at $100,666 per fiscal year.
   a. OPD current hourly rate is $68.48, established during the FY 2019 performance audit. (1,470 x $68.48 = $100,666).
   b. A 1.5% inflation factor is applied in fiscal years 2024 and 2025.

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact:				
Expenditures:				
DOC Operating Expenses	($402,960)	($390,368)	($423,948)	($459,626)
OPD Operating Expenses	($100,666)	($100,666)	($102,176)	($103,708)
TOTAL Expenditures	($503,626)	($491,034)	($526,124)	($563,334)
Funding of Expenditures:				
General Fund (01)	($503,626)	($491,034)	($526,124)	($563,334)
TOTAL Funding of Exp.	($503,626)	($491,034)	($526,124)	($563,334)
Revenues:				
General Fund (01)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$503,626	$491,034	$526,124	$563,334

Sponsor's Initials 3/10/21 *Date*

KA *Budget Director's Initials*

3/8/21 *Date*

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; ~~PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES;~~ AMENDING ~~SECTIONS~~ SECTION 46-18-201~~ AND 46-18-208~~, MCA; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE~~ APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) ~~A~~Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner

that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

~~(i)~~(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

~~(ii)~~(C) 15 years for a violent offender, as defined in 46-23-502, and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106;

~~(iii)~~(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

~~(iv)~~(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-

503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the

offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

~~**Section 2.** Section 46-18-208, MCA, is amended to read:~~

~~"**46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the sentence if:~~

~~(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or~~

~~(b) in the case of a suspended sentence:~~

~~(i) the defendant was sentenced prior to [the effective date of this act], has served more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's offense, and has demonstrated compliance with supervision requirements; or~~

~~(i)~~(ii) ~~the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and~~

~~(ii)~~(iii) ~~the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.~~

~~(2) The motion must set forth the following:~~

~~(a) why the defendant meets the time limitations provided in subsection (1); and~~

~~(b) how the defendant has demonstrated compliance with supervision requirements.~~

~~(3) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.~~

~~(4) The department of corrections shall make reasonable efforts to notify the victim if required by 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following information:~~

~~(a) a copy of the motion;~~

~~(b) written notice that:~~

~~(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;~~

~~(ii) if a hearing is set, the date, time, and place of the hearing; and~~

~~(iii) the victim may appear and testify at any hearing held on the motion.~~

~~(5) The court may hold a hearing on its own motion and may consider a hearing request from the county attorney or defendant.~~

~~(6) If~~ Except as provided in subsection (7), ~~if~~ the court requires a hearing on the motion, the court ~~may grant the motion if it finds that:~~

~~(a) termination of the remainder of the sentence is in the best interests of the defendant and society;~~

~~(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and~~

~~(c) the defendant has paid all restitution and court-ordered financial obligations in full.~~

~~(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this act] and~~ meets the conditions in subsection (1)(b)(i)."

~~NEW SECTION.~~ **~~Section 3. Effective date.~~** ~~[This act] is effective on passage and approval.~~

~~NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to sentences that were imposed prior to [the effective date of this act] when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow.~~

NEW SECTION. **Section 2.** {standard} **Saving clause**. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

COORDINATION SECTION. **Section 3. Coordination instruction**. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

NEW SECTION. **Section 4. Applicability**. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

Amendments to senate Bill No. 553
3rd Reading Copy

Requested by Jimmy Patelis
For the (S) Judiciary

Prepared by Rachel Weiss
03/16/2021, 02:38:07

1. Title, line 5 through line 6.
Strike: "PROVIDING" on line 5 through "SENTENCES;" on line 6

2. Title, line 6.
Strike: "SECTIONS"
Insert: "SECTION"

3. Title, line 7.
Following: "46-18-201"
Strike: "AND 46-18-208"

4. Title, line 7 through line 8.
Strike: "IMMEDIATE" on line 7 through "RETROACTIVE" on line 8

5. Page 1, line 27.
Following: "(b)"
Insert: "(i)"

6. Page 1, line 27.
Strike: "A"
Insert: "Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a"

7. Page 1, line 28.
Following: "community"
Insert: "as a probationer"

8. Page 2, line 2.
Strike: "(i)"
Insert: "(A)"

9. Page 2.
Following: line 2
Insert: "(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;"

10. Page 2, line 3.
Strike: "(ii)"
Insert: "(C)"
Following: "46-23-502"
Insert: ", and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106"

11. Page 2, line 4.
Strike: "(iii)"
Insert: "(D)"

12. Page 2, line 6.
Strike: "(iv)"

Insert: "(E)"

13. Page 2.
Following: line 6
Insert: "(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.
(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000."

14. Page 5, line 4 through page 6, line 21.
Strike: sections 2 through 4 in their entirety
Insert: "NEW SECTION. **Section 2.** {standard} **Saving clause**. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."
Insert: " Coordination SECTION. **Section 3. Coordination instruction**. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:
"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);""
Insert: "NEW SECTION. **Section 4. Applicability**. [This act] applies to crimes committed on or after [the effective date of this act]. "

- END -
Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: “AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES; AMENDING SECTIONS 46-18-201 AND 46-18-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) A sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner that would result in an offender being supervised in the community by

the department of corrections for a period of time longer than:

(i) 20 years for a sexual offender, as defined in 46-23-502;

(ii) 15 years for a violent offender, as defined in 46-23-502;

(iii) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(iv) 5 years for all other felony offenses.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs

was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before

trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 2. Section 46-18-208, MCA, is amended to read:

"**46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant was sentenced prior to [the effective date of this act], has served more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's offense, and has demonstrated compliance with supervision requirements; or

~~(i)~~(ii) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

~~(ii)~~(iii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The motion must set forth the following:

(a) why the defendant meets the time limitations provided in subsection (1); and

(b) how the defendant has demonstrated compliance with supervision requirements.

(3) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.

(4) The department of corrections shall make reasonable efforts to notify the victim if required by 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following information:

(a) a copy of the motion;

(b) written notice that:

(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;

(ii) if a hearing is set, the date, time, and place of the hearing; and

(iii) the victim may appear and testify at any hearing held on the motion.

(5) The court may hold a hearing on its own motion and may consider a hearing request from the county attorney or defendant.

(6) ~~If~~ Except as provided in subsection (7), if the court requires a hearing on the motion, the court may grant the motion if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full.

(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this act] and meets the conditions in subsection (1)(b)(i)."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to sentences that were imposed prior to [the effective date of this act] when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow.

- END -

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; ~~PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES;~~ AMENDING ~~SECTIONS~~ SECTION 46-18-201 ~~AND 46-18-208~~, MCA; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE~~ APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (I) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTIONS (2)(B)(II) AND (2)(B)(III), A sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner

that would result in an offender being supervised in the community AS A PROBATIONER by the department of corrections for a period of time longer than:

~~(i)~~(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 YEARS FOR AN OFFENDER CONVICTED OF DELIBERATE HOMICIDE, AS DEFINED IN 45-5-102, OR MITIGATED HOMICIDE, AS DEFINED IN 45-5-103;

~~(ii)~~(C) 15 years for a violent offender, as defined in 46-23-502, AND FOR AN OFFENDER CONVICTED OF NEGLIGENT HOMICIDE, AS DEFINED IN 45-5-104, OR VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, AS DEFINED IN 45-5-106;

~~(iii)~~(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

~~(iv)~~(E) 5 years for all other felony offenses.

(II) THE PROVISIONS OF SUBSECTIONS (2)(B)(I)(A) AND (2)(B)(I)(B) DO NOT APPLY IF THE SENTENCING JUDGE FINDS THAT A LONGER TERM OF SUPERVISION IS NEEDED FOR THE PROTECTION OF SOCIETY OR THE VICTIM. THE SENTENCING JUDGE SHALL STATE AS PART OF THE SENTENCE AND THE JUDGMENT THE REASONS A LONGER SUSPENDED SENTENCE IS NEEDED TO PROTECT SOCIETY OR THE VICTIM.

(III) THE PROVISIONS OF SUBSECTIONS (2)(B)(I)(A) AND (2)(B)(I)(B) DO NOT APPLY TO VIOLATIONS OF 45-6-301 IF THE AMOUNT OF RESTITUTION ORDERED EXCEEDS $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-

503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the

offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

~~Section 2.~~ ~~Section 46-18-208, MCA, is amended to read:~~

"**~~46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion.~~** ~~(1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the sentence if:~~

~~(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or~~

~~(b) in the case of a suspended sentence:~~

~~(i) the defendant was sentenced prior to [the effective date of this act],~~ has served more time on supervision ~~by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's offense~~, and has demonstrated compliance with supervision requirements; or

~~(i)~~(ii) ~~the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and~~

~~(ii)~~(iii) ~~the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.~~

~~(2) The motion must set forth the following:~~

~~(a) why the defendant meets the time limitations provided in subsection (1); and~~

~~(b) how the defendant has demonstrated compliance with supervision requirements.~~

~~(3) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.~~

~~(4) The department of corrections shall make reasonable efforts to notify the victim if required by~~ ~~46-24-212~~, ~~and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following information:~~

~~(a) a copy of the motion;~~

~~(b) written notice that:~~

~~(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;~~

~~(ii) if a hearing is set, the date, time, and place of the hearing; and~~

~~(iii) the victim may appear and testify at any hearing held on the motion.~~

~~(5) The court may hold a hearing on its own motion and may consider a hearing request from the county attorney or defendant.~~

~~(6) If~~ Except as provided in subsection (7), if ~~the court requires a hearing on the motion, the court may grant the motion if it finds that:~~

~~(a) termination of the remainder of the sentence is in the best interests of the defendant and society;~~

~~(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and~~

~~(c) the defendant has paid all restitution and court-ordered financial obligations in full.~~

~~(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this act] and~~ meets the conditions in subsection (1)(b)(i) . "

~~NEW SECTION.~~ **Section 3.** ~~—~~ **Effective date.** ~~[This act] is effective on passage and approval~~ .

~~NEW SECTION.~~ ~~**Section 4.** — **Retroactive a pplicability .** [This act] applies retroactively, within the meaning of 1-2-109, to sentences that were imposed prior to [the effective date of this act] when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the department of corrections than the limits of 46-18- 201 (2)(b) allow.~~

NEW SECTION. **SECTION 2. SAVING CLAUSE.** [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

COORDINATION SECTION. **SECTION 3. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 391 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 1(2)(B)(I)(C) OF THIS ACT], AMENDING 46-18-201, MUST READ AS FOLLOWS:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

NEW SECTION. **SECTION 4. APPLICABILITY.** [THIS ACT] APPLIES TO CRIMES COMMITTED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

- END -

AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

(i) (A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

(ii) (C) 15 years for a violent offender, as defined in 46-23-502, and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106;

(iii) (D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(iv) (E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an

offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Coordination instruction. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

Section 5. Applicability. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

HB 553, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2021.

_____

President of the Senate

Signed this _____day

of_____, 2021.

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Barry Usher, on February 24, 2021 at 7:00 A.M., in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Barry Usher, Chair (R)
Rep. Kathy Kelker, Vice Chair (D)
Rep. Amy Regier, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Laurie Bishop (D)
Rep. Jennifer Carlson (R)
Rep. Robert Farris-Olsen (D)
Rep. Frank Fleming (R)
Rep. Tom France (D)
Rep. Jane Gillette (R)
Rep. Donavon Hawk (D)
Rep. Jedediah Hinkle (R)
Rep. Bob Phalen (R)
Rep. Derek Skees (R)
Rep. Ed Stafman (D)
Rep. Mallerie Stromswold (R)
Rep. Danny Tenenbaum (D)

Members Excused:

Rep. Dennis R. Lenz (R)
Rep. Brandon Ler (R)

Members Absent: None

Staff Present:

Lydia Balian, Committee Secretary
Rachel Weiss, Legislative Branch
Hallie Swain, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 584, 2/23/2021; HB 578, 2/23/2021; HB 559, 2/23/2021; HB 480, 2/23/2021; HB 391, 2/23/2021; HB 553, 2/23/2021; HB 481, 2/23/2021; HB 560, 2/23/2021; HJ 13, 2/23/2021; HB 581, 2/23/2021; HB 555, 2/23/2021; HB 557, 2/23/2021; HB 591, 2/23/2021; HB 592, 2/23/2021; HB 596, 2/23/2021; HB 552, 2/23/2021
Executive Action on:	HB 584; HB 578; HB 559; HB 480; HB 391; HB 553; HB 258; HB 555; HJ 13; HB 591; HB 592; HB 596; HB 581; HB 557

07:04:50 Chair Usher left the meeting.
07:05:05 Vice Chair Regier assumed the chair.

HEARING ON HB 584

Opening Statement by Sponsor:
07:05:19 Rep. Kerri Seekins-Crowe (R), HD 43, opened the hearing on HB 584, Requiring certain costs paid to detention center be based on actual costs.

Proponents' Testimony:
07:07:43 Nannette Gilbertson, Montana Sheriffs and Peace Officers Association (MSPOA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
07:08:58 Vice Chair Kelker
07:10:05 Rep. Seekins-Crowe
07:10:10 Rep. Skees and Rep. Phalen left the meeting.

Closing by Sponsor:
07:11:00 Rep. Seekins-Crowe

EXECUTIVE ACTION ON HB 584

07:12:06 Rep. Tenenbaum

Discussion:
07:12:24 Rep. Berglee

07:12:58 **Motion/Vote:** Rep. Berglee moved that **HB 584 DO PASS**. Motion carried 17-2 by voice vote with Rep. Bishop and Rep. Tenenbaum voting no. Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Usher voted by proxy.

Discussion:
07:13:44 Rep. Berglee
07:13:50 Rep. France
07:14:03 Rep. Tenenbaum
07:14:54 Rep. Hinkle

HEARING ON HB 578

Opening Statement by Sponsor:
07:15:57 Rep. Terry Moore (R), HD 54, opened the hearing on HB 578, Revise laws related to commitment of defendants.

Proponents' Testimony:
07:17:41 Aimee Grmoljez, City of Billings
07:20:07 Josh Racki, Montana County Attorneys' Association (MCAA)

07:21:39 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association (MSPOA)
07:22:46 Dan Smith, Montana Police Protective Association (MPPA)
07:23:14 Chris Kukulski, self

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
07:25:08 Vice Chair Kelker
07:26:46 Nanette Gilbertson, MSPOA
07:27:28 Rep. Carlson
07:27:46 Rep. Gillette left the meeting.
07:27:59 Rep. Moore
07:28:23 Nanette Gilbertson, MSPOA
07:29:01 Aimee Grmoljez, City of Billings
07:29:20 Rep. Tenenbaum
07:30:00 Rep. Moore
07:30:43 Josh Racki, MCAA

Closing by Sponsor:
07:31:37 Rep. Moore

EXECUTIVE ACTION ON HB 578

07:32:26 **Motion:** Rep. Berglee moved that **HB 578 DO PASS**.

Discussion:
07:32:37 Rep. Fleming

07:33:37 **Vote:** Motion carried unanimously by voice vote. Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Usher voted by proxy.

HEARING ON HB 559

Opening Statement by Sponsor:
07:34:20 Rep. Bill Mercer (R), HD 46, opened the hearing on HB 559, Revise requirements for dissemination of confidential criminal justice info.

07:34:27 Rep. J. Hinkle left the meeting.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
07:37:29 Vice Chair Kelker
07:37:36 Rep. Phalen, Rep. Gillette and Chair Usher rejoined the meeting.

07:39:57 Rep. Mercer
07:41:03 Rep. Farris-Olsen
07:41:31 Rep. Mercer

Closing by Sponsor:
07:43:13 Rep. Mercer

07:43:20 Rep. Ler joined the meeting.

EXECUTIVE ACTION ON HB 559

07:43:37 **Motion/Vote:** Rep. A. Regier moved that **HB 559 DO PASS**. Motion carried 18-1 by voice vote with Rep. Farris-Olsen voting no. Rep. J. Hinkle, Rep. Lenz and Rep. Skees voted by proxy.

HEARING ON HB 480

Opening Statement by Sponsor:
07:44:41 Rep. Bill Mercer (R), HD 46, opened the hearing on HB 480, Revise order of protection laws regarding incapacitated persons.

Proponents' Testimony:
07:47:45 Beth Brenneman, Disability Rights Montana (DRM)
07:49:34 Adrianne Cotton, American Association of Retired Persons (AARP)
07:50:57 Adrian Miller, self

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
07:54:16 Rep. Mercer

EXECUTIVE ACTION ON HB 480

07:54:39 **Motion/Vote:** Rep. A. Regier moved that **HB 480 DO PASS**. Motion carried unanimously by voice vote. Rep. J. Hinkle, Rep. Lenz, and Rep. Skees voted by proxy.

HEARING ON HB 391

Opening Statement by Sponsor:
07:55:49 Rep. Frank Fleming (R), HD 51, opened the hearing on HB 391, Revise and enhance penalties for criminal distribution of dangerous drugs.

Proponents' Testimony:
07:58:12 Cory Swanson, Montana County Attorneys' Association (MCAA)
08:01:43 Josh Racki, Montana County Attorneys' Association (MCAA)

08:03:52 Michelle Mitchell Devine, self
08:05:17 Rep. Gillette left the meeting.
08:06:35 Alan Doane, Montana Department of Justice (DOJ)
08:06:55 Shelby DeMars, Montana Police Protective Association (MPPA)
08:07:28 Scott Twito, Yellowstone County Attorney
08:07:58 Marty Lambert, Gallatin County Attorney

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:10:00 Rep. Phalen
08:10:03 Rep. J. Hinkle rejoined the meeting.
08:10:33 Cory Swanson, MCAA
08:11:28 Rep. Carlson
08:12:03 Marty Lambert, Gallatin County Attorney
08:13:00 Rep. Carlson
08:15:29 Josh Racki, MCAA
08:15:42 Rep. Stafman
08:18:31 Cory Swanson, MCAA
08:19:50 Rep. Tenenbaum
08:22:19 Rep. Fleming

Closing by Sponsor:
08:22:55 Rep. Fleming

EXECUTIVE ACTION ON HB 391

08:23:22 **Motion:** Rep. A. Regier moved that **HB 391 DO PASS**.

Discussion:
08:23:33 Rep. Stafman
08:24:32 Rep. France
08:25:28 Rep. Tenenbaum
08:26:54 Rep. Carlson

08:27:16 **Vote:** Motion carried 10-9 by roll call vote with Rep. Bishop, Rep. Carlson, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman, Rep. Stromswold and Rep. Tenenbaum voting no. Rep. Gillette, Rep. Lenz and Rep. Skees voted by proxy.

HEARING ON HB 481

Opening Statement by Sponsor:
08:28:31 Rep. Steve Gunderson (R), HD 1, opened the hearing on HB 481, Protect critical infrastructure.

Proponents' Testimony:
08:30:36 Alan Olsen, Montana Petroleum Association (MPA)

08:32:02 Ryan Hall, Montana Electric Cooperatives Association (MECA)
08:33:09 Peggy Trenk, Treasure State Resources Association (TSRA)
08:34:32 Melissa Lewis, Charter Spectrum
08:35:11 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties
08:35:59 Laurie Shaw, Northwestern Energy

Opponents' Testimony:
08:39:04 Jestin Dupre, Fort Peck Tribes
08:39:54 Vice Chair Regier assumed the chair.
08:40:56 Adam Haight, Montana American Federation of Labor & Congress of Industrial Organizations (MTAFL-CIO)
08:41:19 Makenna Sellers, Northern Plains Resource Council (NPRC)
08:44:01 Sam Forstag, American Civil Liberties Union of Montana (ACLU)
08:46:04 Keaton Sunchild, Western Native Voice (WNV)
08:47:21 Jordan Thompson, Confederated Salish and Kootenai Tribes (CSKT)
08:47:49 Rep. Lenz joined the meeting.
08:48:01 Daliyah Killsback, Western Native Voice (WNV)
08:49:15 Whitner Chase, Montana Conservation Voters (MCV)
08:49:42 Dick Iversen, self
08:54:09 Pat Runs Through, self
08:57:29 Ta'jin Perez, self
09:00:02 Anne Ostby, self
09:01:48 Derf Johnson, Montana Environmental Information Center (MEIC)
09:05:23 Laurie Little Dog, self
09:07:13 Daniel Wenner, Fort Peck Tribes
09:09:01 Joan Kresich, Northern Plains Resource Council (NPRC)
09:11:50 Josh Butterfly, Opening Doors

Informational Testimony: None

Questions from Committee Members and Responses:
09:13:36 Rep. Tenenbaum
09:14:55 Rep. Gunderson
09:15:20 Rep. Berglee
09:16:47 Rep. Gillette rejoined the meeting.
09:19:11 Sam Forstag, ACLU
09:20:28 Rep. J. Hinkle
09:21:10 Rep. Skees joined the meeting.
09:23:07 Keaton Sunchild, WNV
09:23:35 Rep. Gunderson
09:24:20 Vice Chair Kelker
09:28:50 Derf Johnson, MEIC
09:30:19 Rep. Ler
09:31:25 Dick Iversen, self
09:32:13 Rep. Stafman
09:37:06 Sam Forstag, ACLU
09:37:20 Rep. Phalen

Closing by Sponsor:
09:37:56 Rep. Gunderson

09:41:08 Recess
09:53:26 Reconvened with Rep. Ler and Rep. Lenz excused.

HEARING ON HB 560

Opening Statement by Sponsor:
09:53:40 Rep. Steve Gunderson (R), HD 1, opened the hearing on HB 560, Establish the Montana second amendment preservation act.

Proponents' Testimony:
09:56:57 Garett Bacon, self
09:58:03 Keith Kubista, self

Opponents' Testimony:
09:59:50 Amanda Curtis, Montana Federation of Public Employees (MFPE)

Informational Testimony: None

Questions from Committee Members and Responses:
10:03:13 Rep. Skees
10:04:27 Amanda Curtis, MFPE
10:04:51 Rep. Carlson
10:06:30 Rep. Gunderson
10:07:52 Vice Chair Kelker
10:08:54 Rep. Gunderson
10:10:48 Chair Usher
10:12:07 Rep. Ler joined the meeting.
10:12:46 Amanda Curtis, MFPE

Closing by Sponsor:
10:13:08 Rep. Gunderson

HEARING ON HB 553

Opening Statement by Sponsor:
10:14:58 Rep. Jimmy Patelis (R), HD 52, opened the hearing on HB 553, Limit time of suspended sentences for felony convictions.

Proponents' Testimony:
10:21:21 Sam Forstag, American Civil Liberties Union of Montana (ACLU)
10:22:09 SK Rossi, Montana Innocence Project (MTIP)
10:23:08 Zuri Moreno, Montana Budget & Policy Center (MBPC)
10:23:20 Vice Chair Regier left the meeting.

Opponents' Testimony:
10:24:48 Cory Swanson, Montana County Attorneys' Association (MCAA)
10:26:11 Chair Usher left the meeting.
10:26:23 Vice Chair Kelker assumed the chair.

Informational Testimony: None

Questions from Committee Members and Responses:
10:28:48 Rep. Carlson
10:28:57 Chair Usher and Vice Chair Regier rejoined the meeting.
10:30:27 Rep. Patelis
10:31:16 Vice Chair Kelker
10:31:50 Rep. Patelis
10:31:56 Rep. Lenz joined the meeting. Rep. Farris-Olsen left the meeting.

Closing by Sponsor:
10:35:05 Rep. Patelis

EXECUTIVE ACTION ON HB 553

10:37:19 **Motion:** Rep. A. Regier moved that **HB 553 DO PASS**.

Discussion:
10:37:29 Vice Chair Kelker
10:38:53 Rep. Fleming
10:40:38 Chair Usher

10:41:10 **Vote:** Motion carried unanimously by voice vote. Rep. Farris-Olsen voted by proxy.

EXECUTIVE ACTION ON HB 258

10:42:56 **Motion/Vote:** Rep. A. Regier moved that **HB 258 BE REMOVED FROM TABLE**. Motion carried without objection.

10:44:20 **Motion:** Rep. J. Hinkle moved to **RECONSIDER THE MOTION ON AMENDMENT HB258.1.1 AND AMENDMENT HB258.1.3** on **HB 258**.

Discussion:
10:45:01 Chair Usher
10:45:51 Vice Chair Kelker

10:46:33 **Vote:** Motion carried 15-4 by voice vote with Rep. Farris-Olsen, Rep. Hawk, Rep. Kelker and Rep. Stafman voting no. Rep. Farris-Olsen voted by proxy.

10:47:06 **Motion:** Rep. J. Hinkle moved that **HB 258 BE AMENDED**.
EXHIBIT(juh39a01)

Discussion:
10:47:23 Rachel Weiss, Legislative Services Division (LSD)
10:48:32 Rep. J. Hinkle
10:50:26 Rep. France left the meeting.

10:48:47 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Farris-Olsen and Rep. France voted by proxy.

10:49:44 **Motion:** Rep. A. Regier moved that **HB 258 DO PASS AS AMENDED**.

10:49:50 Rep. France rejoined the meeting.

10:49:52 **Motion/Vote:** Rep. J. Hinkle moved that **HB 258 BE AMENDED**. Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Farris-Olsen voted by proxy.

EXHIBIT(juh39a02)

10:52:14 **Motion:** Rep. A. Regier moved that **HB 258 DO PASS AS AMENDED**.

Discussion:

10:52:26 Rep. Carlson
10:52:40 Rep. Skees
10:52:56 Rep. Phalen
10:53:06 Chair Usher
10:53:34 Rep. France

10:55:15 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Farris-Olsen voted by proxy.

HEARING ON HJ 13

Opening Statement by Sponsor:

11:13:55 Rep. Neil Duram (R), HD 2, opened the hearing on HJ 13, Resolution for Article V US constitution convention of states.

11:14:09 Rep. Farris-Olsen rejoined the meeting.

Proponents' Testimony:

11:23:20 Sen. Molnar
11:27:06 Terry Kramer, self
11:32:49 Sen. McGillvray

EXHIBIT(juh39a03)

11:39:56 Clifford Sisko, self
11:41:19 Tracy Schuster, self

Opponents' Testimony:

11:45:29 Rep. Windy Boy
11:47:15 Ed Regan, Broadwater County Republican Central Committee
11:52:31 Rep. Phalen
11:53:14 Jim Buterbaugh, self
11:54:03 Cory O'Brian, self
11:55:29 Billy Ross, self
11:58:47 Wayne Rusk, self
12:01:39 Clare Parker, self
12:05:27 Curtis Hughes, self

12:08:42 Ed Dobrowski, self
12:09:29 Amel McEuan, self
12:13:59 Thomas Millett, self

Informational Testimony: None

Questions from Committee Members and Responses:
12:15:43 Rep. Gillette
12:16:36 Sen. McGillvray
12:18:14 Rep. J. Hinkle
12:24:25 Rep. Duram
12:25:08 Rep. Carlson
12:25:22 Rep. J. Hinkle
12:25:52 Rep. Carlson
12:27:44 Sen. McGillvray
12:28:54 Rep. Carlson
12:30:11 Rep. Skees
12:34:00 Rep. Duram
12:34:18 Rep. Skees
12:37:25 Sen. McGillvray
12:38:14 Chair Usher
12:40:02 Rep. Duram
12:41:08 Rep. Carlson
12:41:27 Rep. Ler
12:41:49 Rep. Duram

Closing by Sponsor:
12:42:07 Rep. Duram

12:46:36 Recess
15:02:30 Reconvened with Rep. Carlson, Rep. Berglee, Rep. Phalen, Rep. Lenz, Rep. Ler, Rep. France and Rep. Hawk excused.

HEARING ON HB 555

Opening Statement by Sponsor:
15:02:44 Rep. Matt Regier (R), HD 4, opened the hearing on HB 555, Revise civil liability laws on personal property exempt from execution.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
15:03:48 Rep. Regier

15:04:06 Rep. J. Hinkle

EXECUTIVE ACTION ON HB 555

15:04:56 **Motion/Vote:** Rep. A. Regier moved that **HB 555 DO PASS**. Motion carried unanimously by voice vote. Rep. Berglee, Rep. Carlson, Rep. France, Rep. Gillette, Rep. Hawk, Rep. Lenz, Rep. Ler and Rep. Phalen voted by proxy.

15:06:00 Rep. Phalen, Rep. Carlson and Rep. Hawk joined the meeting.

EXECUTIVE ACTION ON HJ 13

15:06:46 **Motion:** Rep. A. Regier moved that **HJ 13 DO PASS**.

Discussion:
15:06:59 Rep. J. Hinkle
15:08:40 Rep. Carlson
15:10:10 Rep. Skees

15:12:14 **Vote:** Motion failed 6-13 by roll call vote with Rep. Berglee, Rep. Carlson, Rep. Fleming, Rep. Lenz, Rep. A. Regier and Rep. Stromswold voting aye. Rep. Berglee, Rep. France, Rep. Gillette, Rep. Lenz and Rep. Ler voted by proxy.

15:13:21 **Motion/Vote:** Rep. A. Regier moved that **HJ 13 BE TABLED**. Motion carried without objection.

15:13:38 Rep. Carlson
15:14:05 Rep. Skees

HEARING ON HB 591

Opening Statement by Sponsor:
15:14:58 Rep. Joe Read (R), HD 93, opened the hearing on HB 591, Generally revise evidence laws.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 592

Opening Statement by Sponsor:
15:16:13 Rep. Joe Read (R), HD 93, opened the hearing on HB 592, Generally revise absolute liability laws.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 596

Opening Statement by Sponsor:
15:16:28 Rep. Joe Read (R), HD 93, opened the hearing on HB 596, Generally revise laws related to false arrest and imprisonment.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: None

EXECUTIVE ACTION ON HB 591

15:17:02 **Motion/Vote:** Rep. A. Regier moved that **HB 591 BE TABLED**. Motion carried without objection.

EXECUTIVE ACTION ON HB 592

15:17:22 **Motion/Vote:** Rep. A. Regier moved that **HB 592 BE TABLED**. Motion carried without objection.

EXECUTIVE ACTION ON HB 596

15:17:39 **Motion/Vote:** Rep. A. Regier moved that **HB 596 BE TABLED**. Motion carried without objection.

15:18:06 Rachel Weiss, Legislative Service Division (LSD)

HEARING ON HB 581

Opening Statement by Sponsor:
15:18:41 Rep. Robert Farris-Olsen (D), HD 79, opened the hearing on HB 581, Revise gun storage laws.

Proponents' Testimony:
15:21:57 Ione Young, Montana Moms Demand Action

Opponents' Testimony:
15:25:56 Garrett Bacon, self
15:25:59 Rep. Skees left the meeting.

Informational Testimony: None

Questions from Committee Members and Responses:
15:27:53 Rep. J. Hinkle
15:29:59 Rep. Farris-Olsen
15:30:23 Chair Usher
15:30:51 Rep. Farris-Olsen
15:30:59 Rep. Tenenbaum left the meeting.

Closing by Sponsor:
15:31:42 Rep. Farris-Olsen

EXECUTIVE ACTION ON HB 581

15:32:21 **Motion:** Rep. A. Regier moved that **HB 581 DO PASS**.

Discussion:
15:32:26 Chair Usher
15:32:48 Rep. Bishop
15:34:42 Rep. Stromswold left the meeting.
15:35:02 Vice Chair Kelker
15:36:34 Rep. J. Hinkle
15:37:42 Chair Usher

15:38:37 **Vote:** Motion failed 7-12 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting aye. Rep. Berglee, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Skees, Rep. Stromswold and Rep. Tenenbaum voted by proxy.

15:40:38 **Motion/Vote:** Rep. A. Regier moved that **HB 581 BE TABLED**. Motion carried without objection.

HEARING ON HB 557

Opening Statement by Sponsor:
15:41:06 Rep. Jonathan Windy Boy (D), HD 32, opened the hearing on HB 557, Revise missing person laws.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
15:46:21 Rep. Hawk
15:46:54 Rep. Windy Boy
15:47:30 Vice Chair Kelker
15:48:26 Rep. Stromswold rejoined the meeting.
15:48:52 Rep. Windy Boy
15:50:23 Rep. Hawk
15:51:13 Rep. Carlson

Closing by Sponsor:
15:51:55 Rep. Windy Boy

EXECUTIVE ACTION ON HB 557

15:52:21 **Motion:** Rep. A. Regier moved that **HB 557 DO PASS**.

Discussion:
15:52:44 Vice Chair Kelker
15:53:55 Rep. Carlson
15:54:29 Rep. Bishop
15:55:11 Rep. Hawk
15:55:45 Chair Usher
15:56:09 Rep. Fleming
15:56:00 Rep. Farris-Olsen left the meeting.
15:57:29 Rep. Phalen
15:57:41 Rep. Carlson
15:58:09 Chair Usher
15:58:25 Rep. Phalen and Rep. Gillette left the meeting.
15:58:34 Rep. Kelker

15:59:05 **Vote:** Motion failed unanimously by voice vote. Rep. Berglee, Rep. Farris-Olsen, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy.

15:59:52 **Motion/Vote:** Rep. A. Regier moved that **HB 557 BE TABLED**. Motion carried 10-0 by voice vote.

HEARING ON HB 552

Opening Statement by Sponsor:

16:00:42 Rep. Ed Stafman (D), HD 62, opened the hearing on HB 552, Establish Montana racial justice act.

16:03:04 Chair Usher left the meeting.
16:03:11 Vice Chair Regier assumed the chair.

Proponents' Testimony:

16:07:02 Sam Forstag, American Civil Liberties Union of Montana (ACLU)
16:08:02 Keaton Sunchild, Western Native Voice (WNV)
16:08:25 Chair Usher rejoined the meeting.
16:09:46 Kelly Twoteeth, Indigenous Organizers Collective
16:10:09 Vice Chair Regier left the meeting.
16:10:52 Jasmine Krotkov, self
16:11:22 Rep. Carlson left the meeting.
16:13:27 Travis McAdam, Montana Human Rights Network (MHRN)
16:15:03 Myshell Lyday, Montana Association of Criminal Defense Lawyers

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

16:20:38 Rep. Hawk
16:21:22 Chair Usher
16:21:51 Rep. Hawk
16:22:11 Rep. Stafman
16:23:40 Vice Chair Kelker
16:26:33 Rep. Stafman
16:28:31 Rep. Fleming
16:30:11 Rep. Carlson rejoined the meeting.
16:33:02 Rep. Stafman

Closing by Sponsor:

16:33:51 Rep. Stafman

EXECUTIVE ACTION ON HB 552

16:37:48 **Motion:** Rep. A. Regier moved that **HB 552 DO PASS**.

Discussion:

16:37:55 Rep. Stafman
16:38:24 Rep. Ler left the meeting.
16:38:33 Vice Chair Regier rejoined the meeting.
16:38:48 Rep. Fleming
16:40:26 Vice Chair Kelker
16:41:34 Rep. Hawk
16:42:33 Rep. J. Hinkle

16:43:46 Rep. Bishop
16:45:19 Rep. Stafman
16:47:06 Chair Usher

16:48:21 **Vote:** Motion failed 7-12 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting aye. Rep. Berglee, Rep. Farris-Olsen, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy.

16:49:17 **Motion/Vote:** Rep. A. Regier moved that **HB 552 BE TABLED**. Motion carried without objection.

EXECUTIVE ACTION ON HB 91

16:49:36 **Motion/Vote:** Rep. A. Regier moved that **HB 91 BE REMOVED FROM TABLE**. Motion carried without objection.

Discussion:
16:50:12 Rep. Stafman
16:50:53 Vice Chair Kelker
16:51:58 Rachel Weiss, Legislative Services Division (LSD)
EXHIBIT(juh39a04)

16:56:56 **Motion:** Rep. A. Regier moved that **HB 91 BE AMENDED**.
EXHIBIT(juh39a05)

Discussion:
16:57:24 Vice Chair Kelker
16:57:56 Chair Usher
16:59:13 Rep. Stafman left the meeting. Rep. Farris Olsen rejoined the meeting.

16:58:13 **Vote:** Motion carried unanimously by voice vote. Rep. Berglee, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees, Rep. Stafman and Rep. Tenenbaum voted by proxy.

16:59:32 **Motion/Vote:** Rep. A. Regier moved that **HB 91 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Berglee, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees, Rep. Stafman and Rep. Tenenbaum voted by proxy.

EXECUTIVE ACTION ON HB 333

17:00:36 **Motion:** Rep. Kelker moved to **RECONSIDER THE MOTION** on **HB 333**.

17:00:55 **Motion/Vote:** Rep. A. Regier moved that **HB 333 BE REMOVED FROM TABLE**. Motion carried without objection.

17:01:11 **Motion/Vote:** Rep. A. Regier moved that **HB 333 DO PASS AS AMENDED**. Motion carried 14-5 by roll call vote with Rep. Berglee, Rep. Carlson, Rep. J. Hinkle, Rep. Ler and Rep. Stromswold voting no. Rep. Berglee, Rep. France, Rep. Gillette, Rep. Lenz, Rep. Ler, Rep. Phalen, Rep. Skees, Rep. Stafman and Rep. Tenenbaum voted by proxy.

17:06:44 Rachel Weiss, LSD

ADJOURNMENT

Adjournment: 17:12:01

_____
Lydia Balian, Secretary

lb

Additional Documents:

EXHIBIT(juh39aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Wednesday, February 24, 2021 **Time:** 7:00 A.M.
Place: Capitol **Room:** 137

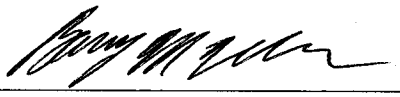
BILLS and RESOLUTIONS HEARD:

HB 391 - Revise and enhance penalties for criminal distribution of dangerous drugs - Rep. Frank Fleming (R)
HB 480 - Revise order of protection laws regarding incapacitated persons - Rep. Bill Mercer (R)
HB 481 - Protect critical infrastructure - Rep. Steve Gunderson (R)
HB 552 - Establish Montana racial justice act - Rep. Ed Stafman (D)
HB 553 - Limit time of suspended sentences for felony convictions - Rep. Jimmy Patelis (R)
HB 555 - Revise civil liability laws on personal property exempt from execution - Rep. Matt Regier (R)
HB 557 - Revise missing person laws - Rep. Jonathan Windy Boy (D)
HB 559 - Revise requirements for dissemination of confidential criminal justice info - Rep. Bill Mercer (R)
HB 560 - Establish the Montana second amendment preservation act - Rep. Steve Gunderson (R)
HB 578 - Revise laws related to commitment of defendants - Rep. Terry Moore (R)
HB 581 - Revise gun storage laws - Rep. Robert Farris-Olsen (D)
HB 584 - Requiring certain costs paid to detention center be based on actual costs - Rep. Kerri Seekins-Crowe (R)
HB 591 - Generally revise evidence laws - Rep. Joe Read (R)
HB 592 - Generally revise absolute liability laws - Rep. Joe Read (R)
HB 596 - Generally revise laws related to false arrest and imprisonment - Rep. Joe Read (R)
HJ 13 - Resolution for Article V US constitution convention of states - Rep. Neil Duram (R)

EXECUTIVE ACTION TAKEN:

HB 584 - Do Pass
HB 578 - Do Pass
HB 559 - Do Pass
HB 480 - Do Pass
HB 391 - Do Pass
HB 553 - Do Pass
HB 258 - Do Pass as Amended
HB 555 - Do Pass
HJ 13 - Be Tabled
HB 591 - Be Tabled
HB 592 - Be Tabled
HB 596 - Be Tabled
HB 581 - Be Tabled
HB 557 - Be Tabled
HB 552 - Be Tabled
HB 91 - Do Pass as Amended
HB 333 - Do Pass as Amended

Comments:



REP. Barry Usher, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/24/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR	✓	
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR	✓	
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE	✓	
REP. GILLETTE	✓	
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ		✓
REP. LER		✓
REP. PHALEN	✓	
REP. SKEES	✓	
REP. STAFMAN	✓	
REP. STROMSWOLD	✓	
REP. TENENBAUM	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 584** (first reading copy -- white) **do pass.**

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 17, No 2
Fiscal Note Required __

HB0584001SC.hlc

2.24.21
JR 2:43PM

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 578** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0578001SC.hlc

2.24.21 SR 12:39pm

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 559** (first reading copy -- white) **do pass.**

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 18, No 1
Fiscal Note Required __

HB0559001SC.hlc

2.24.21 JR 2:44pm

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 480** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0480001SC.hlc

2.24.21
SR 12:40pm

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 391** (first reading copy -- white) **do pass.**

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 10, No 9
Fiscal Note Required __

HB0391001SC.hlc

2.24.21
SR 11:40pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 553** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0553001SC.hlc

2.24.21 JR 2:44pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 258** (first reading copy -- white) **do pass as amended**.

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 4.
Strike: "ANY"
Insert: "A"

2. Title, line 6.
Following: "DATE"
Insert: "AND A RETROACTIVE APPLICABILITY DATE"

3. Page 1, line 19.
Following: "regulation"
Insert: "that is enacted, adopted, or becomes effective on or after January 1, 2021"

4. Page 1, line 20.
Strike: "an existing"
Insert: "a"

5. Page 1, line 20.
Following: "law"
Insert: "that existed on January 1, 2021,"

6. Page 2, line 9 through line 17.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

7. Page 2, line 19.
Strike: "in an action that does not have the"
Insert: ", communicating, or collaborating with a federal agency if the primary"

8. Page 2, line 20.
Strike: "of enforcing"
Insert: "is not:

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HB0258001SC.hlc

2.24.21 SR 12:29pm

(a) law enforcement activity related to a federal ban; or
(b) the investigation of a violation of"

9. Page 3.
Following: line 2
Insert: "NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to a federal law, executive order, rule, or regulation adopted or enacted on or after January 1, 2021, or a new and more restrictive interpretation of a law that existed on January 1, 2021."

- END -

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 555** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0555001SC.hlc

2.25.21 TR 11:03AM

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 91** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 6.
Following: "YEARS"
Insert: "FOR CERTAIN VIOLENT OFFENDERS"

2. Title, line 7.
Following: "YEARS;"
Insert: "REVISING WHEN AN OFFENDER MAY NOT PETITION TO BE REMOVED FROM THE SEXUAL OR VIOLENT OFFENDER REGISTRIES;"

3. Page 1, line 14.
Following: "~~register~~"
Strike: ":"

4. Page 1, line 15.
Following: "~~(a)~~"
Strike: "(i)"

5. Page 1, line 16.
Following: "~~but~~"
Strike: ";"

6. Page 1, line 17.
Strike: "(ii)"
Following: "after"
Insert: "registering for"
Following: "register"
Insert: "unless convicted as provided in subsection (2)(b)"

7. Page 1, line 22.
Following: line 21
Insert: "(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the offender shall register for the remainder of the offender's

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0091003SC.hlc

2.25.21 R 12:45pm

life unless relieved of the duty to register as provided in subsection (3)."

Renumber: subsequent subsections

8. Page 1, line 22.
Following: "(2)(a)"
Strike: "(ii)"

9. Page 2, line 1.
Following: "a"
Insert: "violent offender registered as provided in subsection (2)(b) or a"

10. Page 2, line 26.
Following: "sexual"
Insert: "or violent"

- END -

HOUSE STANDING COMMITTEE REPORT

February 24, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 333** (first reading copy -- white) **do pass as amended**.

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Page 1, line 19.
Strike: "was"
Insert: "is currently"

- END -

Committee Vote:
Yes 14, No 5
Fiscal Note Required __

HB0333003SC.hlc

2.25.21 1:05pm

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

HB 552 - Establish Montana racial justice act - Rep. Ed Stafman (D)
HB 557 - Revise missing person laws - Rep. Jonathan Windy Boy (D)
HB 581 - Revise gun storage laws - Rep. Robert Farris-Olsen (D)
HB 591 - Generally revise evidence laws - Rep. Joe Read (R)
HB 592 - Generally revise absolute liability laws - Rep. Joe Read (R)
HB 596 - Generally revise laws related to false arrest and imprisonment - Rep. Joe Read (R)
HJ 13 - Resolution for Article V US constitution convention of states - Rep. Neil Duram (R)

by motion, on **Wednesday, February 24, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Lydia Balian
(For the Committee)

(For the Chief Clerk of the House)

6:04pm / 2/24
(Time) (Date)

February 24, 2021 (5:50pm) Lydia Balian, Secretary Phone: 444-4872

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 391 DATE 2/24/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		✓
REP. GILLETTE	✓		✓
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		✓
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 258 DATE 2/24/21

MOTION Do Pass Amendment HB258.1.4

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	✓
REP. FRANCE		✓	✓
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 258 DATE 2/24/21

MOTION Do Pass Amendment HB258.1.5

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	✓
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 258 DATE 2/24/21

MOTION Do Pass as Amended

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	✓
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HJ 13 DATE 2/24/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		✓
REP. PHALEN		✓	
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		✓
REP. GILLETTE		✓	✓
REP. LER		✓	✓
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE		✓	
REP. HAWK		✓	
REP. SKEES		✓	
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	✓
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 581 DATE _____

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD		✓	✓
REP. BERGLEE		✓	✓
REP. PHALEN		✓	
REP. FLEMING		✓	
REP. STAFMAN	✓		
REP. LENZ		✓	✓
REP. GILLETTE		✓	✓
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES		✓	✓
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		✓
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 552 DATE 2/24/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	✓
REP. PHALEN		✓	✓
REP. FLEMING		✓	
REP. STAFMAN	✓		
REP. LENZ		✓	✓
REP. GILLETTE		✓	✓
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES		✓	✓
REP. FARRIS-OLSEN	✓		✓
REP. FRANCE	✓		✓
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 333 DATE 2/24/21

MOTION Do Pass as Amended

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	✓
REP. PHALEN	✓		✓
REP. FLEMING	✓		
REP. STAFMAN	✓		✓
REP. LENZ	✓		✓
REP. GILLETTE	✓		✓
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES	✓		✓
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		✓
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 553	Do Pass	✓	
HB 258	Remove from Table	✓	
HB 258	Reconsider HB258.1.1 and HB258.1.3	✓	
HB 258	Be Amended HB258.1.4		✓
HB 258	Be Amended HB258.1.5		✓
HB 258	Do Pass As Amended		✓
HB 557	Do Pass		✓
HB 552	Do Pass	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. Signed via email (Signature) Rep. Farris-Olsen (Print Name) 2/24/21 (Meeting Date)

Rep. Farris-Olsen

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 91	Do Pass amendment HB91.1.1	✓	
HB 91	Do Pass as Amended	✓	
HB 333	Do Pass as Amended	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. _____ Rep. Stafman 2/24/21

(Signature) (Print Name) (Meeting Date)

Rep. Stafman

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 581	Do Pass	✓	
HB 557	Do Pass		✓
HB 552	Do Pass	✓	
HB 91	Do Pass amendment HB 91.1.1	✓	
HB 91	Do Pass as Amended	✓	
HB 333	Do Pass as Amended	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Danny Tenenbaum 2/24/21

(Signature) (Print Name) (Meeting Date)

Rep. Tenenbaum

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
HB584 Do Pass	✓	
HB 578 Do Pass	✓	
HB 559 Do Pass	✓	
HB 480 Do Pass	✓	
HB 391 Do Pass	✓	
~~HB 5~~ HB 581 Do Pass		✓
HB 557 DO PASS		✓
HB 552 Do Pass		✓
Amendment HB91.1.1	✓	
HB ??? Do Pass	✓	
HB 91 Do Pass as Amended	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ Date 24 Feb '21
(Signature)

Rep. Skees

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Skees.

BILL	AYE	NO
HB584 Do Pass	✓	
HB578 Do Pass	✓	
HB555 Do Pass	✓	
HB557 Do Pass		✓
HB552 Do Pass		✓
Amendment HB91.1.1	✓	
HB91 Do Pass	✓	
HB [illegible] Do Pass	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Bob Phalen (Signature)

Date 24 Feb 21

Rep. Phalen

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

BILL	AYE	NO
HB 584 Do Pass	✓	
HB 578 Do Pass	✓	
HB 559 Do Pass	✓	
HB 480 Do Pass	✓	
HB 391 Do Pass	✓	
HB 555 Do Pass	✓	
HJ 13 Do Pass	✓	
HB 581 Do Pass		✓
HB 557 Do Pass		✓
HB 552 Do Pass		✓
Amendment HB91.1.1	✓	

BILL	AYE	NO
HB 333 Do Pass	✓	
HB 91 Do Pass as Amended	✓	

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ Date 24 Feb '21
(Signature)

Rep. Lenz

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB384	Do Pass	✓	
HB578	Do Pass	✓	
HB311	Do Pass	✓	
HB555	Do Pass	✓	
HJ13	Do Pass		✓
HB581	Do Pass		✓
HB557	Do Pass		✓
HB552	Do Pass		✓
HB91	Amendment HB91.1.1 Do Pass	✓	
HBXXX	Do Pass as Amended	✓	
HB91	Do Pass as Amended	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ J. Gillette 2/24/21
(Signature) (Print Name) (Meeting Date)

Rep. Gillette

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 258	Be Amended HBJ 58.1.4		✓
HB555	Do Pass	✓	
HJ 13	Do Pass		✓
HB581	Do Pass	✓	
HB 557	Do Pass		✓
HB 552	Do Pass	✓	
HB 91	Do Pass Amendment HB91.1.1	✓	
HB 91	Do Pass as Amended	✓	
HB 333	Do Pass as Amended	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. _____ Rep. France 2/24/21
(Signature) (Print Name) (Meeting Date)

Rep. France

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
HB584 Do Pass	✓	
HB578 Do Pass	✓	
HB559 Do Pass	✓	
HB555 Do Pass	✓	
HJ13 Do Pass		✓
HB581 Do Pass		✓
HB557 Do Pass		✓
HB552 Do Pass		✓
HB91 Amendment HB91.1.1	✓	
HB???? Do Pass as Amended		✓
HB91 Do Pass as Amended	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. [signature] Date 24 Feb '21

(Signature)

Rep. Ler

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A Regier.

BILL	AYE	NO
HJ 17 Do Pass	✓	
HB 581 Do Pass		✓
HB 557 Do Pass		✓
HB 552 Do Pass		✓
Amendment HB91.1.1	✓	
HB 91 Do Pass	✓	
HB 333 Do Pass		✓
HB 555 Do Pass	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. [signature] Date 2/24/21

(Signature)

Rep. Berglee

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

BILL	AYE	NO
HB555 Do Pass	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Jennifer Carlson (Signature)

Date 2/24/21

Rep. Carlson

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Amy Regier.

BILL	AYE	NO
HB 581 Do Pass		✓

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Mallett Stromswold (Signature)

Date 2/24/21

Rep. Stromswold

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB555	Do Pass	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. Donavon Hawk 2/24/21
(Signature) (Print Name) (Meeting Date)

Rep. Hawk

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

BILL	AYE	NO
HB584 Do Pass	✓	
HB578 Do Pass	✓	
HB 584 Do Pass	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ Date 24 Feb '21
(Signature)

Chair Usher

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

BILL	AYE	NO
HB559 Do Pass	✓	
HB480 Do Pass	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Jedediah Hinkle
(Signature)

Date 2/24/21

Rep. Hinkle

Montana State Legislature

2021 Legislative Session

WITNESS STATEMENTS

The following is an assortment of documents that are witness statements.

"A witness statement is a signed document recording the evidence of a witness. A definition "a written statement signed by a person which contains the evidence which that person would be allowed to give orally."

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

WITNESS STATEMENT

Hi, my name is Carmelita Dominguez, and I am here on behalf of Moms Demand Action for Gun Sense in America to advocate for the passing of HB 581 which requires secure storage of firearms and provides violations and penalties for that do not provide secure gun storage.

This is a good idea that can be supported by the majority of people in Montana. I have lived in Montana for 13 years, and if there is anything that has been made very clear to me is that Montana fiercely loves its natural landscapes, its independence, and its people. Hunting and self-reliance is integral to the fabric of our culture. Therefore, firearms have a place in a Montana home.

That being said, along with a love of firearms, is a fierce pride and love for family and safety. Secure gun storage is absolutely essential for a home for many reasons - not only to protect the guns, but the home and family as well. We know that over half the households do not lock up all their firearms. This can lead to access that results in accidents and suicides. While many will say, "my kids know not to play with guns." How many can say that their kids' friends know the difference? How many can say that their depressed teen will never think about the family's unlocked guns. Here are some simple facts.

- Montana's firearm suicide rate is more that twice the national average. Twice. 79% of firearms deaths among children and teens are firearm suicides.

- Access to a gun can mean the difference between life and death. 90 percent of suicide attempts with a gun are fatal, versus 4 percent not involved with a gun.

- Research suggests that secure storage laws can help reduce firearm suicide and other forms of gun violence, particularly among youth:

    - One study estimated that if half of households with children that contain at least one unlocked gun switched to locking all their guns, one-third of youth gun suicides and unintentional deaths could be prevented, saving an estimated 251 lives in a single year.

Gun safety means lives saved.

WITNESS STATEMENT

montana
HUMAN RIGHTS NETWORK

February 23, 2021

Dear Chairman Usher and Members of the House Judiciary Committee:

The Montana Human Rights Network opposes HB 560 on behalf of our 8,000 members and supporters across the state. We believe the bill is based on a misguided view of the U.S. Constitution and will have negative impacts on Montana communities.

While HB 560 references the Second Amendment and U.S. Constitution, the spirit of the bill better reflects when the country was under the Articles of Confederation. The bill makes it appear that states can individually decide which federal laws they will, and will not, enforce. States had more ability to operate like this under the Articles; however, the U.S. Constitution makes it clear that states must adhere to federal law. Article VI of the U.S. Constitution, which is commonly called the "Supremacy Clause," clearly states that the laws of the United States "shall be the supreme Law of the Land." HB 560 clearly violates this provision.

We also oppose the bill because of our 30 years as an organization tracking and working to prevent violence by anti-government militias and other such groups. When these groups are looking to setup shop or start mobilizing, a major consideration for them is how lenient gun laws are in a location. Passage of HB 560 won't just result in lengthy and costly court battles for the state. It will also function as a welcome mat for anti-government groups. The state already has very lax gun laws, and now the state would be on record saying that it won't enforce federal law. That is an enticing invitation to militias and other such groups.

We encourage you to stand for the U.S. Constitution, the rule of law, and the safety of our communities by voting NO on HB 560.

Travis McAdam
Program Director:
Combating White Nationalism & Defending Democracy
Montana Human Rights Network
(406) 442-5506 ext. 11
travis@mhrn.org

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 2:48 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-560: Establish the Montana second amendment preservation act 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 14:47

Details:
Bill: HB-560: Establish the Montana second amendment preservation act 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Larry D Rattray
Email: rattpak@centurytel.net
Phone: (406) 849-5610
City, State: Proctor
Written Statement: Please support HB 560. In this world of unmatched executive orders it is important that Montana not spend it's resources in the federal government's attempt to disarm the people of this country. Thank you for your time and consideration.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 4:17 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-552: Establish Montana racial justice act 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 16:17

Details:
Bill: HB-552: Establish Montana racial justice act 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Human Rights Network
Name: Travis McAdam
Email: travis@mhrn.org
Phone: (406) 442-5506
City, State: Helena, MT
Written Statement: The Montana Human Rights Network supports House Bill 552 on behalf of our 8,000 members and supporters across the state. People currently have the ability to take action if they face discrimination based on race or ethnicity when it comes to employment, housing, education, and public accommodations to name a few. These protections come from the recognition that racism does still exist in our communities, and we want to try and get rid of it. HB 552 extends this notion to the courts. We support the bill's effort to create a process by which people can challenge convictions and sentences if they feel such rulings were based on race, ethnicity, or national origin. Please vote YES on HB 552.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 3:44 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-552: Establish Montana racial justice act 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 15:43

Details:
Bill: HB-552: Establish Montana racial justice act 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Indian People's Action
Name: Lita J Pepion
Email: LitaPepion@hotmail.com
Phone: (406) 208-5779
City, State: Billings
Written Statement: We experience racism in every aspect of Justice in Montana - our children, culture and means of survival are criminalized and it gets worse from there. Court, District Attorneys and Judges are all white. Most have college experience but haven't learned anything about Native American history, trauma or survival and it shows in every aspect of how they speak to us, how their bias affects our outcome, how their fines and punishment hurt us, etc. After 11 years of living it via Personal Experience, THIS BILL IS NECESSSARY!
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

Hello Mr. Chair & Representatives,

I'd just like to concur will all the other proponents, but also that we have a lot of data and statistics that indicate possible racism in our justice system, some of which was mentioned in the meeting today.

But, I wanted to also talk about my personal experience and how my teenage son went from having a Careless Driving charge to being on the Violent Offenders List all in a matter of a couple of months - and without being dangerous.

That happened 11 years ago and we are still paying with our lives, time, my retirement account (for "bond" that we never get back even when we show up to court).

We read the paper and almost every day see a charge of a white person committing a similar or worse crime who got a lot less time.

We also work with folks coming out of the system and hear stories of racist judgements often. I'm sending this now because you're voting soon - PLEASE VOTE YES ON HB-552.

They are criminalizing our children, taking our retirement to pay for it, and basically destroying our families. Justice has become the New Indian Boarding School and it's NOT acceptable.

Lita J. Pepion, Senior Organizer
Indian People's Action

WITNESS STATEMENT

Indian People's Action

To: Montana House Judiciary Committee **From: Moana Vercoe, MBA, PhD**

Date: February 24 2021 **RE: HB 552**

Indian People's Action Response to the Montana Racial Justice Bill

The Need for this Bill – Racism in the Justice System

Indian People's Action has a long history of seeking equity, transparency and accountability in the Montana Justice system. In 2014, IPA was a plaintiff in a lawsuit seeking to expose systemic racism in the Montana judiciary.[1]

May 3, 2013, Montana Chief U.S. District Judge, Richard Cebull retired after a nine month investigation for ethics code violations related to racist emails sent from his official email account. (Judge Cebull's email is an example of animal language and racism as it suggested that Obama was the product of bestiality where one of the parties was a dog.)[2] The Ninth Circuit's Judicial Council investigation into four years of emails found:

> "A significant number of emails were race related. Whether cast as jokes or serious commentary, the emails showed disdain and disrespect for African Americans, Native Americans and Hispanics, especially those who are not in the United States legally. A similarly significant number of emails related to religion and showed disdain for certain faiths. Approximately the same number of emails concerned women and/or sexual topics and were disparaging of women. A few emails contained inappropriate jokes relating to sexual orientation."[3]

The 9th Circuit declared the results of this investigation moot when Cebull retired. In sealing the file of the investigation, the 9th Circuit shut down any possible investigation into how far the emails had gone and the possibility of systemic racism within the Montana judicial system.[4]

At the time that Judge Cebull's email became public, he was presiding over *Wandering Medicine v McCulloch*, a Voting Rights Act case seeking equal access to voting for Native Americans living on reservations. Indian People's Action worked with the plaintiffs in this case. Judge Cebull had dismissed *Wandering Medicine v. McCulloch*, but his verdict was overturned by the 9th Circuit. Indian People's Action and Native voting rights group, 4 Directions, sued the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States and the Office of Ninth Circuit Executive to unseal Judge Cebull's file and release his emails. This lawsuit and another filed by journalists John Adams and Shane Castle of Montana Free Press[5] were dismissed on the basis that Judge Cebull could do no further harm.

---

[1] Case number 4:14-cv-03022.
[2] https://www.usatoday.com/story/news/nation/2014/01/17/judge-montana-cebull-racist-obama/4592315/
[3] https://montanafreepress.org/2017/12/18/kozinski-cebull-misconduct/
[4] https://www.law360.com/articles/441292/order-over-judge-s-racist-obama-email-is-moot-9th-circ-says
[5] Case number 4:15-cv-01046

Justice Alex Kozinski of the U.S. Court of Appeals for the 9th Circuit who ordered Judge Cebull's case be sealed resigned after claims of sexual misconduct in 2017.[6]

Not only does the existing system tolerate racially incendiary and racially coded language, but it actively protects it.

Persisting Racism in the Law Enforcement

Attitudes that certain communities and/or races are predisposed to criminality and need additional policing are prevalent in some of Montana's largest police departments. In a January 2021 interview about the shooting of a Native man, Billings Police Department Lt. Brandon Wolley of the Office of Professional Standards commented: "When we get to the bottom of this conversation, the Native American culture doesn't need less policing. They truly need more policing."[7] In a July 2020 KTVQ report on racial profiling in Billings Trend in Billings, Lt. Wolley stated: "We are not consistently using excessive force in any group or category. We police ourselves, and we have policies and practices, set up to continually improve upon a professional organization."[8] However, the KTVQ reports that BPD's own number show that in 2019, 27% of the 131 reported use of force by BPD officers involved Native Americans and 5% involved an African American. According to the US Census Bureau, Native Americans make up 4.5% of the Billings population and African Americans make up 0.83%.[9] BPD numbers on race are most likely underestimated because "Race/Ethnicity is based on observation by officers, not on self-reporting."[10]

The Law and its Implementation

Montana has a law prohibiting racial profiling,[11] but this law is limited to traffic stops. Section 3b of this law requires "periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws." Section 9 states: "The department of justice shall make available to the public information regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section." However, I cannot find where this information is released.

Systems for implementing and evaluating any law related to justice and race necessary as is the political will for enforcing the law.

Some Numbers

In Billings, Native Americans make up about 5% (1 in 5) of the population, but 26% (1 in 4) of the people charges by Billings Police Department, and 36% of the charges brought are brought against Native Americans (1 in 3)[12] – see graph below. These numbers are from the BPD 2018 Annual Report.

---

[6] https://montanafreepress.org/2017/12/18/kozinski-cebull-misconduct/

[7] https://www.wyomingpublicmedia.org/post/montana-family-speaks-out-about-police-violence-against-indigenous-people?fbclid=IwAR09wU2Px-uLPMeugl3t1ClGaHTpMEYcUtv1KON-gzrS0dnn1k8ZJRUGvFA#stream/0

[8] https://www.ktvq.com/mtn-investigates/is-racial-profiling-a-problem-with-billings-police

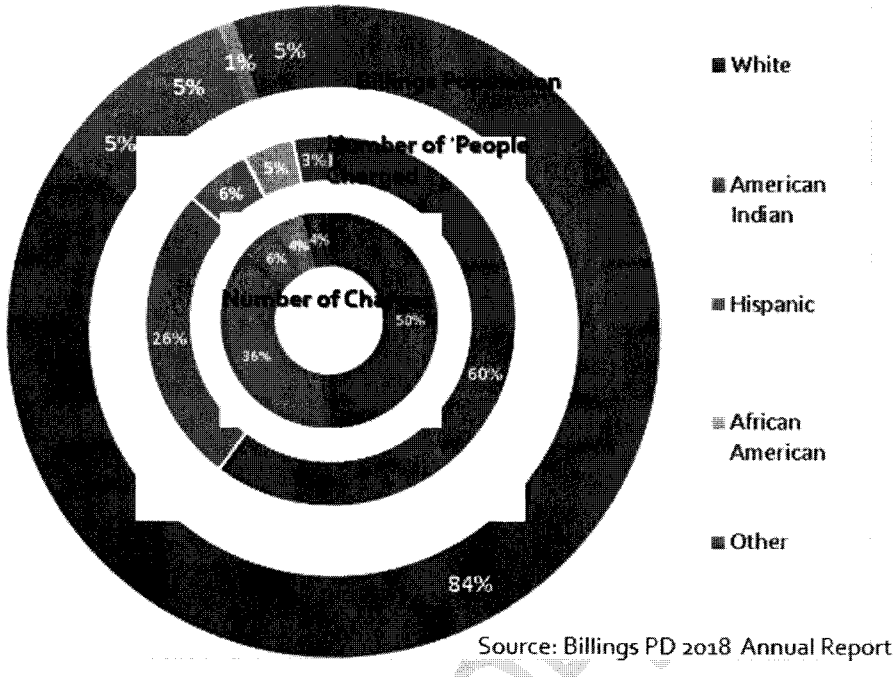
[9] http://www.usa.com/billings-mt-population-and-races.htm#PopulationbyRaces

[10] *Billings Police Department 2019 Annual Report*, p. 36.

[11] Mont. Code Ann. § 44-2-117

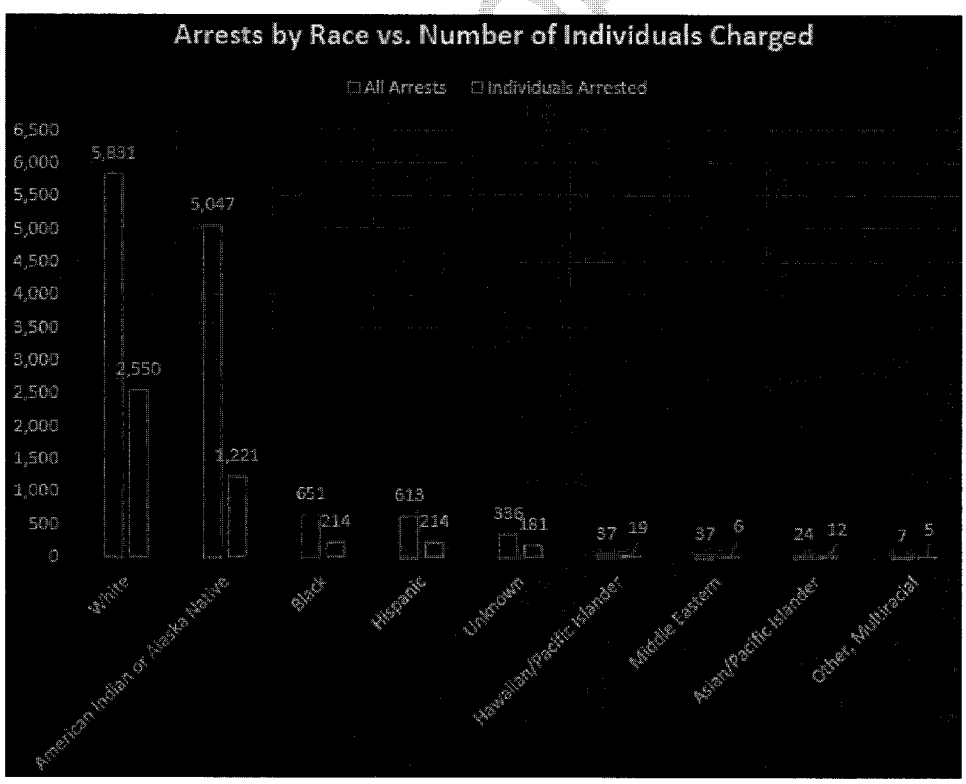
[12] *Billings Police Department 2018 Annual Report*.

Equivalent numbers for charges are not available in the 2019 Annual Report. Instead the 2019 Annual Report shows arrests with Native Americans accounting for 30% of all people arrested and 40% of all arrests. On average, a Native American who was arrested by BPD in 2019, was arrested 4 times. By comparison, there were 2.6 arrests for each white person arrested.



2018 Billings Police Department charges by race

Source: Billings PD 2018 Annual Report

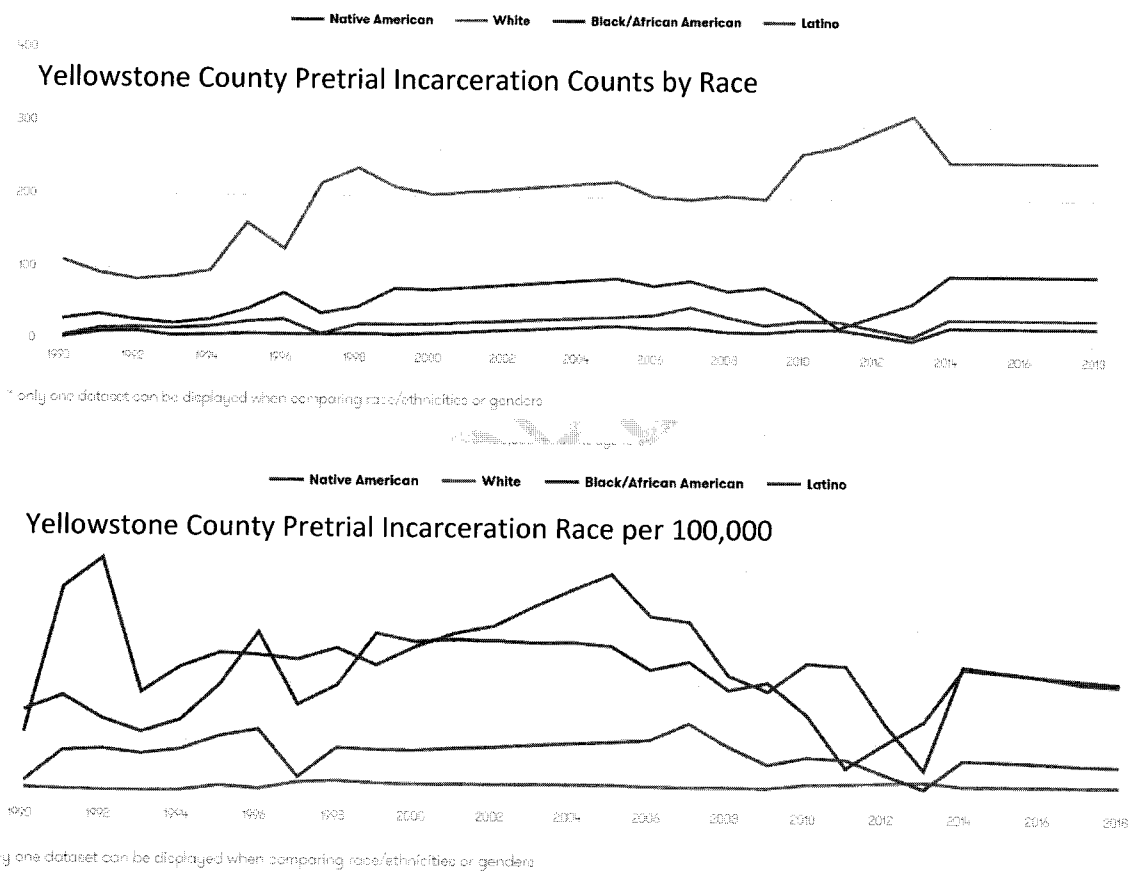


2019 Billings Police Department arrests by race

Source: BPD 2019 Annual Report, p. 35.

Assess racial profiling and racial discrimination in law enforcement and the criminal justice system is challenging because of inconsistencies in how information on race is collected and reported. BPD uses officer assessments on race and reported date on charges in 2018 and arrests in 2019. IPA has monitored the biennial report of the Montana Department of Corrections for tends in the over-incarceration of Native Americans, but each report contains less information on race.

There is a pipeline from police encounter to decisions about charging to bail and pretrial incarceration, to trial and conviction and then the revolving door of probation and parole violations that disproportionately places and keeps Native Americans and other minorities in Montana jails and prisons.


Native American
White
Black/African American
Latino
Yellowstone County Pretrial Incarceration Counts by Race
* only one dataset can be displayed when comparing race/ethnicities or genders
Native American
White
Black/African American
Latino
Yellowstone County Pretrial Incarceration Race per 100,000
* only one dataset can be displayed when comparing race/ethnicities or genders

Source: Vera Institute of Justice[13]

Yellowstone County has some of the nation's highest levels of pretrial incarceration. In 2018, 24% of those awaiting trial in Yellowstone County Jail were Native American. Economics and race intersect in pretrial incarceration as shown when the numbers for race are expressed per 100,000. Pretrial incarceration has devastating impact on minority families. A November 2015 report by Judge Ingrid Gustafson, District Court judge for the 13th Judicial District Court demonstrates how people who spent

[13] https://trends.vera.org/rates/yellowstone-county-mt

as little as two days in pretrial incarceration were four times as likely to receive a custodial sentence as those who were released within 24 hours of arrest.[14]

According to the Department of Correction 2017 Biennial Report, approximately one third of all offenders released after serving custodial sentences will be incarcerated within three years.[15] Of these, only 5% of men and 2% of women who are incarcerated for committing new crimes. The vast majority are re-incarcerated for probation and parole violations.

A Couple of Stories from 2019

Three Native American boys (16, 12 and 8) were playing in the trailer park in Billings where they lived. Two older Caucasian boys (aged over 15 years old) started a fight by picking on the younger Native boy. When BPD were called the handcuffed all of the Native American children and put them in the back of the police cruiser. No actions were taken by BPD against the Caucasian boys.

An African American man and his Native American wife were in their RV eating in the parking lot of a fast food outlet. A security guard approached the RV and started a conversation from outside the driver's side window. The security guard pulled a gun and held it as if aiming it at the head of the African American man. No charges were brought against the security guard.

A sixteen year old Native American girl was at a friend's house when a boy from her school burst in uninvited, found the room the girl was in, and shot her. After a short investigation, the Billings Police Department declined to press charges.

Conclusion

HB 552 is an important step towards creating equity and accountability in the Montana justice system. This bill will enhance public safety in our communities for all people in Montana.

INDIAN PEOPLES ACTION

[14] https://leg.mt.gov/content/Committees/Interim/2015-2016/Sentencing/Meetings/Nov-2015/Exhibits/gustafson-drug-courts-101-cos-nov-2015.pdf

[15] Montana Department of Corrections 2017 Biennial Report.

WITNESS STATEMENT

Written Testimony in Opposition to **HJ-13**
Before the House Judiciary Committee
February 24, 2021
by
Edward W. Regan, Chairman
Broadwater County Republican Central Committee

RE: HJ 13; Montana's Application for a Convention of States under Article V of the Constitution of the United States; Sponsored by Representative Neil Duram.

Chairman Usher, members of the Committee, for the record my name is Ed Regan, I live and work in Townsend Montana. I am a lifelong republican and Chairman of the Broadwater County Republican Central Committee. Today I testify for our central committee and myself.

We **oppose** passage of **HJ 13**, Montana's Application to convene a Convention of States under Article V of the United States Constitution for proposing a **Balanced Budget** amendment. This Committee should consider the risk to the United States constitution by convening a Conference of States under Article V.

Requesting an Article V ***Conference of States*** is no different from calling a constitutional Convention. This is a dangerous and untested process for amending the constitution. A Conference of States might easily turn into a runaway convention that would threaten the basic structure and underpinnings of our Republic. The language in Article V makes no distinction between a convention and conference.

If restraining federal spending is the purpose for a ***COS***, we believe that goal can be accomplished, without new amendments, by having the three branches simply adhere to their enumerated powers already enshrined in the constitution. New amendments are meaningless to a government that does not obey the current constitution. However, if you are convinced that amendments are the only option, than at least use the process by which the existing 27 amendments have passed, **not the Convention Alternative.**

An easier, far safer and more expedient alternative to curbing federal spending and overreach is for the state legislators to exercise their power under **Article VI** to protect constituents by refusing to enforce unconstitutional federal laws. Montana has already exercised this power. Our long fight against Real ID, Attorney General's litigation against federal usurpations and changes to Marijuana laws are some examples of States refusing to enforce unconstitutional laws. In the 19th century, several northern states refused to enforce a federal law called the "Fugitive Slave Act". In 1799, Thomas Jefferson called nullification the ***"rightful remedy"*** for any unconstitutional acts of the federal government. Nullification is a legal tool to enforce and protect the constitution, without opening it up and changing it. The federal government may squawk and try to withhold federal dollars to states not enforcing unconstitutional federal law,

however when the Trump administration tried to withhold money from California it was overturned in the courts.

HJ 13 attempts to place restrictions on delegates to any future convention by limiting the scope of the Article V Conference of States (constitutional convention) once it is seated. However, reading the Article V language it becomes obvious that the authority of the states is limited to only making the initial application. Once that step is completed, the power to set the rules for *calling* the convention and even delegate selection methods shifts to the Congress of the United States. The states will have very little say.

At the 1787 convention, delegates came to town with rules from their home states; however, in the end nine of the thirteen state delegations violated their commissions (Federalist 40-Jefferson). Personally, I do not believe the special interests in America today are going to allow a limited convention. Once assembled the convention becomes a sovereign body able to govern itself. Over the past two centuries, some of America's most astute legal minds have been warning us of this fact:

Former Chief Justice Warren Burger stated: "There is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or to one issue, but there is no way to assure that a Convention would obey".

In a 1/16/90 letter to Utah State Representative, Reese Hunter, Former US Federal Court Judge, Solicitor General and Supreme Court Nominee, **Robert Bork, stated**: "It is my view that a Federal Constitutional Convention could not be limited to a single issue. The original Philadelphia Convention went well beyond the purposes for which it was called and nobody has suggested the constitution is a nullity for that reason. Accordingly, I do not see how a Convention could be limited to one topic once it has been called". Judge Bork noted that our original constitutional convention was a **"runaway"** in a sense that the delegates exceeded their instructions from the Confederate Congress.

In April 2014, Marvin Kalb asked **Justice Antonin Scalia**, on a program produced by the national Press Club, "If you could amend the Constitution in one way, what would it be?" Scalia answered, "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that." Again, on May 8, 2015 at the Federalist Society in Morristown, New Jersey, Scalia was asked whether a constitutional convention would be in the nation's best interest, to which the greatest modern day Supreme Court justice replied "A constitutional convention is a horrible idea. This is not a good century to write a constitution."

While our nation was blessed to have men the caliber and character of Washington, Madison and Franklin back in 1787, does anybody in this body trust putting the fate of our constitution, **including the Electoral College,** in the hands of today's politicians and special interests? There is another attack on the constitution percolating among progressives called the National Popular Vote Interstate Compact (NPVIC), which seeks to turn the Electoral College into a

rubber stamp for the popular vote. **Certainly, these people would want their delegates seated at the Convention of States.**

James Madison, father of the constitution, warned in 1788 that a second convention 'would no doubt contain individuals with insidious views seeking to alter the very foundation and fabric of the constitution'. (Letter to G.I. Tuberville 11/2/1788)

Harvard Professor **Lawrence Lessig** is a national leader on the left promoting an Article V Constitutional Convention. After the 2016 presidential election, Lessig made headlines by offering free legal services to any Elector who would switch his vote in the Electoral College from Trump to Clinton. In 2013 he founded a non-profit group named "Call the Convention". One of that group's objectives is to convene a convention for the purpose of abolishing the Electoral College and replacing it with the national popular vote. In 2014, Lessig shared a stage with **Mark Meckler**, the current spokesman for the Conference of States, at a Seattle conference (Citizens University's Annual Conference) promoting the Article V convention, though for very different reasons. Lessig has been extremely open in his support of conservatives who want a Constitutional Convention (or as some prefer to call it a Convention of States) because Lessig's goal is to get the convention called, not help conservatives pass conservative amendments. Unfortunately, many good conservatives do not understand how they may be unwittingly helping to advance a progressive agenda.

Since 1988 seventeen state legislatures, including **Montana** had become so thoroughly convinced of the dangers posed by an Article V Convention that they passed **Resolutions to rescind all previous applications for conventions still on their books.**

Although the proponents of HJ 13 believe their goals can be attained under Article V, I ask you to consider the following questions; do we have a constitutional problem? or do we have a problem adhering to the constitution? Final question is the Conference of States really a Trojan horse designed to upend our constitutional protections and the Bill of Rights?

Our nation is too divided to pull off a successful Article V convention. **HJ 13** would expose the constitution to the possibility of a complete re-write. It is not worth the risk.

We urge this Committee to vote against HJ 13 and avoid the uncharted waters of a con-con. In closing we ask that the republican members of the committee refer back to the National Affairs plank from our Party's 2016 Platform on page 10; and I quote, "We adamantly oppose any attempts, whether direct or indirect, to undermine the Constitution of the United States and its Amendments, including the Bill of Rights".

Thank you for your consideration and please vote against HJ 13.

Edward W. Regan, Chairman
Broadwater County Republican Central Committee

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 10:30 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 10:29
Attachments: DEBUNKING THE JBS TALKING POINTSrevised.pdf; leftwing email to montana legislators.pdf

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Tracy Schuster
Email: imhappyru@hotmail.com
Phone: (406) 230-2710
City, State: Glentana, Montana
Written Statement: Testimony provided by Tracy Schuster

Our Framers created a decentralized government structure.
Yet since the 1930s, the national government has continuously taken unconstitutional actions to regulate the economy and society and to redistribute our resources.

As imagined, this amassed centralization of authority in DC has taken its toll on the freedoms of We the People.
While their social engineering efforts in the educational system resulted in some level of support for centralization, citizens are undeniably seeing and feeling the effects of those socialist policies; consequently, public opinion has changed and there is a growing call for the restoration of the Constitution's principle of federalism aka, decentralization.
This shift is consistent with other data which exposes a deep and growing distrust in the federal government to act on behalf of the public good or in protecting our nation's sovereignty.

The National Debt is absolute proof that the federal government's policies regulating the economy and society and redistributing our resources has failed miserably.
Other than DC politicians and their friends, who has benefitted from the trillions stolen from future generations?

We are sitting at $28 trillion in debt, so I must ask:
- Why hasn't the war on inequality succeeded?
- Why are our resources still being redistributed—
- Why are American's resources going to other countries?

Why are our borders open when:
- Millions of American jobs are being out-sourced, exacerbating inequality within our borders?
- Americans taxes are increased to cover the living expenses of legal and illegal immigrants?

Why is it that other Countries are not held accountable for the conditions which motivate their citizens to leave their homeland in mass exodus?
Land is land—it is not the land that is responsible for oppression and exploitation—it is the policies of their government.
There will be no end to mass immigration from 3rd world countries until tyrants from the third world countries condemn failed marxist control and embrace freedom and liberty.

Why is dependence upon government handouts promoted instead of promoting attributes such as:

- Entrepreneurialship,
- Self-reliance,
- Self-responsibility and
- Accountability

which are all qualities proven to enhance mankind.

Why do we continue to be taxed for federal mandated programs which were not only unconstitutional in their force, but have failed in achieving their aspired goals?

Why not trust charitable and compassionate citizens in serving the primary needs of their local community members?

Returning to a more personable giving and receiving would replace the entitlement mentality with a greater sense of gratitude. The entitlement mentality grows from a misconception that the money comes from the federal government—no, that money comes from your hard-working fellow American citizens.

Many citizens believe state and local governments are likely to perform better than the distant policy makers in Washington.

How much more are the American citizens and their posterity going to have to pony up?
Speaking of robbing our posterity, is that not a prime example of taxation without representation? Our posterity cannot and would not approve of this feckless debt.

As you can guess, I am an ardent proponent of the States using their authority in our Constitution's Article V to restrain the federal government's immoral spending.

I am also committed to speak up and contest the disinformation that has been repeatedly used by the opposition to render this most significant provision inert.
The authority for the States to call a convention for proposing amendments is in our Constitution as a means to reassert our rightful place as the true fountain of power in America.
This provision and this authority should not be obstructed, it should be advanced and recognized as the preeminent means of preserving federalism and liberty.
Files: DEBUNKING THE JBS TALKING POINTSrevised.pdf leftwing email to montana legislators.pdf Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 1:14 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 13:13
Attachments: HJ 13 Written Comments - Thomas Millett.pdf

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Thomas Millett
Email: simplytom65@yahoo.com
Phone: (406) 212-3613
City, State: Marion, MT
Written Statement: Committee Members,

I OPPOSE House Joint resolution 13 (HJ 13) for all the reasons others have opposed it.
However, I want to present you with a possible scenario and ask you a few simple questions.

Let's say you vote for this resolution and Congress does call for a Convention... ...and the Convention did "runaway" ...
...and 2/3rds of the delegates voted to pass new amendments or a new Constitution on to the states for ratification...
...and 3/4ths of the states ratified the new amendments or Constitution... ...and one result of all this was that the Bill of Rights was replaced with a Bill of Privileges.

What are you going to tell your children and grandchildren when they ask you...?
...why they have to attend church in secret instead of the state-sanctioned church on the corner?
...or why they can't watch, read, or listen to anything that hasn't been first "fact-checked" by the National Truth Administration (NTA).
...or why they can't stand on the sidewalk and wave American flags like they did with their friends in 2020?
...or why they can't question the actions of their government...ever?
...and most importantly, why you didn't do anything when government agents came and took Uncle Joe and Aunt Polly to the "re-education" center because they voted for President Trump in 2020 or said something derogatory about the current presidential administration or a certain political party?
Was it because you couldn't defend them when they needed it the most because you didn't have any firearms? And why didn't you have any firearms to protect them? Was it because a Privilege to Keep and Bear Arms wasn't included in the new Bill of Privileges?

If you don't think this can happen I'm sure the Chinese didn't think it could happen to them in 1948.
Are you prepared to answer these questions from your children and grandchildren? I'm not and I hope you're not either.
Please vote NO on HJ 13.

Thank you,
Thomas Millett
Marion, MT
Files: HJ 13 Written Comments - Thomas Millett.pdf Testify via Zoom: Yes Zoom Method: Computer

WITNESS STATEMENT

Committee Members,

I OPPOSE House Joint resolution 13 (HJ 13) for all the reasons others have opposed it.

However, I want to present you with a possible scenario and ask you a few simple questions.

Let's say you vote for this resolution and Congress does call for a Convention…

…and the Convention did "runaway" …

…and 2/3rds of the delegates voted to pass new amendments or a new Constitution on to the states for ratification…

…and 3/4ths of the states ratified the new amendments or Constitution…

…and one result of all this was that the Bill of Rights was replaced with a Bill of Privileges.

What are you going to tell your children and grandchildren when they ask you…?

…why they have to attend church in secret instead of the state-sanctioned church on the corner?

…or why they can't watch, read, or listen to anything that hasn't been first "fact-checked" by the National Truth Administration (NTA).

…or why they can't stand on the sidewalk and wave American flags like they did with their friends in 2020?

…or why they can't question the actions of their government…ever?

…and most importantly, why you didn't do anything when government agents came and took Uncle Joe and Aunt Polly to the "re-education" center because they voted for President Trump in 2020 or said something derogatory about the current presidential administration or a certain political party?

Was it because you couldn't defend them when they needed it the most because you didn't have any firearms? And why didn't you have any firearms to protect them? Was it because a Privilege to Keep and Bear Arms wasn't included in the new Bill of Privileges?

If you don't think this can happen I'm sure the Chinese didn't think it could happen to them in 1948.

Are you prepared to answer these questions from your children and grandchildren? I'm not and I hope you're not either.

Please vote NO on HJ 13.

Thank you,
Thomas Millett
Marion, MT

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 4:53 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 16:53

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Levi McEuen
Email: thegiftranch@gmail.com
Phone: (406) 427-5174
City, State: Broadus
Written Statement: Good Morning. My name is Levi McEuen. I am a resident of Powder River County, HD 41. My Representative is Rynalea Whiteman Pena.

I have come today to express my concerns about the prospect of Montana joining an Article V Convention of States, thereby attempting to amend our U.S. Constitution.

Although I am not an expert on the interpretation of the Constitution, I have studied it extensively, as well as listened to constitutional scholars on such subject matter. As to this matter, some have been for and others against such a convention.

I admit that the prospect of making changes to our Constitution sounds promising, but when one studies the facts and applies logic to the possibilities of what a Convention could lead to -- the outcome for our Constitution -- I fear for myself, my children and my fellow citizens and country.

Now more then ever we need to be guided by the brilliance of our founding fathers when they wrote the constitution. Every proposed amendment that has been suggested is already addressed by the constitution. It needs no amending, but just needs to be followed. And I might add a significant portion of that responsibility lies at the State level. Not at the Federal level as it does now.

During the course of my life I have met with several individuals from a wide ranging background and beliefs from all across the US. Oftentimes we would discuss politics and of course different views would arise. I would challenge them on their understanding of our founding documents such as the Declaration of Independence and our constitution. I found that our society as a whole has a tremendous misunderstanding or NO understanding of our nation's founding and what our founding fathers did for us in giving us this great Republic. Worth noting, many lost their lives and fortunes for us. I challenged my peers to go home and read the documents and learn about the founding fathers and come back to me and let me know if their vote was in support of what our founding fathers stood for. My experience was that more than half, after reviewing what I asked them, reported they would like to change their vote. I fear that we do not know what we are voting for in this case if one votes to support an Article 5 Convention. Just like my fellow peers did not know what they were voting for. They just said, "It sounded good to them."

That said I disagree with the promoters of an Article V Convention of States in at least 3 areas:

1. There are almost no rules for the convention in Article V of the Constitution. You have to ask yourself "who sets the rules for the Convention? This leaves it up to Congress to make up the rules. One example of concern on the rules is how it will be voted on. We already know that the Supreme Court has required "one man, one vote" rule since 1964. Thus one would expect the House to require voting based on population. That makes California having 18 times more votes then Montana. Do the citizens of Montana want that? No. States in this matter should be equal: One State One Vote.
2. Could an Article V convention prohibit changing the ratification process. In the political environment in which we find ourselves with no regard for truth or the sacredness of our fundamental constitutional processes like elections, what might we expect? History tells us that the Constitutional Convention of 1787 did just that.
3. An Article V convention cannot be limited to specific proposed amendments. The text of the Constitution expressly states multiple "Amendments" will be allowed – a plural "s" after "Amendment". You can be assured that the first thing to go would be our Right to Keep and Bear Arms, next our Freedom of Religion, Freedom of Speech and Assembly; and adding the constitutional right to an abortion.

The solution to our country's problems lies in the fact that our Constitution is not followed. The Constitution clearly states what it is and what it is not. It should not be interpreted by stating "I think." It should be "The Constitution states...." It is time that States stood up for themselves and defended their rights to ensure that the Constitution is followed. By doing so the many ideas of amendments that are floating around in support of an Article V Convention would naturally be addressed by the original constitution.

I stated at the beginning of this that I tremble at the prospects of our Constitution being changed by a Convention of States. History tells us that James Madison trembled, too. It is time to follow the original intent of the constitution and not vote to make changes to the constitution but to enforce the Constitution as it was written: not how it is mis-interpreted.

Thank you for your vote against HJ13 an Article V Convention of States.

In addition, Amel Samuelson-McEuen will be testifing with me on the same computer
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:53 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:52

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: League of Women Voters Montana
Name: Nancy Leifer
Email: nancleifer@gmail.com
Phone: (406) 207-9114
City, State: Missoula, Montana
Written Statement: Testimony on HJ 13 , Hearing in House Judiciary Committee Wednesday, February 24 Submitted by Nancy Leifer On behalf of the League of Women Voters Montana

The League of Women Voters was founded in 1920 to help new voters understand their role and responsibility in voting in our democracy. The League is a non-partisan organization. We do not endorse candidates or political parties.

The League uses a process of study, discussion and consensus to arrive at policy positions. In 2016, the LWV conducted a study of Article V Constitutional Conventions, followed by a nation-wide League consensus process for adopting positions. The League is concerned that there are many unresolved questions about the powers and processes of an Article V Constitutional Convention. Until these questions are resolved, the League does not support Article V constitutional conventions.

The League of Women Voters does not support a federal balanced budget. The League believes that federal fiscal policy should provide for adequate and flexible funding of federal government programs. At times like now, when our economy has been devastated by the effects of the Covid 19, the federal government needs the ability to stimulate the economy. A balanced budget amendment would prohibit these efforts to assist small businesses, individual families and those who are out of work, hospitals, state and local governments, and whole industries that would fail without financial support.

The League of Women Voters Montana urges you to oppose HJ 13.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS
STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:41 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:40

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Daniel Keder
Email: kederds@hotmail.com
Phone: (406) 231-0305
City, State: Great Falls
Written Statement: My name is Daniel Keder, I am a registered voter and resident of Cascade County, Montana. I am a retired Air Force Officer who served for just over 23 years. Currently I operate a small business with my wife. I have been a legal resident of Montana since 1984 and have resided in Cascade County since 2003.

I am testifying today in opposition to HJ 13, a proposal to apply to the U.S. Congress to call a convention to amend the U.S. Constitution under the provisions of Article V of that document. I am presenting three reasons why HJ 13 should be tabled and killed by this committee.

The U.S. Constitution is not the cause of the fiscal irresponsibility that has resulted in our current unbalanced government budgets, consequently, amending it does not offer a viable solution. Government budgets, at all levels, are unbalanced because of government overreach and usurpation. The general or central government of the U.S. is spending wealth at levels beyond human comprehension because it is doing things it is not authorized to do under the limited powers granted to it by the U.S. Constitution. If the citizens limit government to is actual and proper constitutional limits the justification for funds will be eliminated. If they do not, no amendments to the Constitution will be able to prevent the flood of red ink.

Balancing the budget is not the same thing as reducing it. The unconstitutional size and scope of the central government is driving the unbalanced budget. If the size and scope of the central government is not reduced all a balanced budget amendment will mean, in effect, is increased taxes.

The state of emergency exemption contained in HJ 13, as in all the balanced budget proposals I have seen, renders this entire effort of no effect. If the central government can operate with a budget deficit during a state of emergency then they could have legally done so with this proposed amendment adopted as part of the U.S. Constitution since 1976. According to Wikipedia 34 national states of emergency are still current. The problem here is two-fold. The National Emergencies Act of 1976 is one of those government usurpations that provides Congress and the president with an open ended and flexible loop-hole to avoid any balanced budget amendment that leaves them an exception for a national emergency. In defense of both Congress and the proponents of a balanced budget amendment, there is no realistic way to prohibit government deficit spending during an actual national emergency. It is a classic Cath-22 situation.

In conclusion, HJ 13 is a proposal that totally misses it's intended mark. It won't fix the problem of central government deficit spending because it doesn't address the cause and it provides an unavoidable exception. It offers all the risks inherent in opening the U.S. Constitution up for amendment while offering none of the benefits of imposing fiscal responsibility. I urge the members to kill this bill.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:18 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:18

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Clifford Sisko
Email: csisko@outlook.com
Phone: (406) 853-3529
City, State: Miles City
Written Statement: I support HJ13. We have a broken structure and that needs to be addressed. We need to do it because congress won't. We need to do it for our loved ones both now and in the future. This is a fight I don't feel we can afford to loose for their sakes as well as for the sake of the nation. On the outside the structure looks really good but the inside is dirty and full of mold. I constantly hear from folks who say our federal government doesn't work, it is broken but nobody comes up with a solution. The solution is Article V Convention of States and constitutional solutions are stated in the resolution.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 10:59 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 10:58

Details:
Bill: HJ-13: Resolution for Article V US constitution convention of states 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Big Sky Worldview Forum
Name: Richard A Pence
Email: rapence45@gmail.com
Phone: (406) 672-9207
City, State: Billings, Montana
Written Statement: Montana House Judiciary Testimony Dick and Nancy Pence, 4307 Palisades Park Dr., Billings 59106 rapence45@gmail.com I Coordinator, Big Sky Worldview Forum 406-672-9207 In support of HJ13 – Applying for a Convention of States Under Article V.
Why I have changed my mind on a Convention of States The one who states his case first seems right, until another comes to examine him. (Proverbs 18:17 ESV) Over a decade ago, I first learned of the idea of a Convention of States. First from a Constitutional Scholar and later from respected friends in the John Birch Society of which I am a member. The above Proverb is a good warning to us of our human tendency to embrace and hold fast to the first ideology, philosophy or even religion, we are introduced to. Over my lifetime of seventy-five years, this warning has served me well. Because of my functions in worldview training on numbers of issues, I have often had occasion to re-examine a thought process. On average, I believe, I was better off for those reconsiderations.
We usually don't budge easily and I didn't either. But after hearing from many sound thinking people over a period of several years, I have reconsidered the Article V, Convention of States issues. I know you're going to be bombarded with many issues, I will only mention a couple that I feel are compelling.
Article V was placed in the constitution with sound reasoning by the Framers: Among other purposes, it was intended as a vehicle for the states to reign in the Federal government – something that now drastically needs to be done. While the Federal government has grown out of control, states have done nothing to stop this growth. Opponents argue that the process could get hijacked by liberals. Their arguments focus on fear rather than the mechanisms provided to control the process.
Balanced Budget Amendment Restraint: In 2008, when I first considered this issue, America was in debt about $10T. Some conservatives were even suggesting the debt was not a concern – they are not singing that song now. If the next stimulus bill passes, the debt will be closer to $30T, much of it from our friends the Chinese Communists. Aside from the fact that we are putting our youth in bondage they will never be able to repay, this debt is near the point where it could destroy our Republic. I believe this threat is an imminent risk.
Opponents, again, point to the risk of losing control of the process, but that risk seems small compared to the risk of economic collapse. They also argue congress would ignore such a restraint. The Left would like to ignore the 1st and 2nd Amendments also, but these amendments have been the bread and butter of our defense for these sacred privileges. I contend that having this as law would add force that could be used by principled men to hold the congress to a balanced budget.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 3:45 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-391: Revise and enhance penalties for criminal distribution of dangerous drugs 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 15:44

Details:
Bill: HB-391: Revise and enhance penalties for criminal distribution of dangerous drugs 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana County Attorney's Association
Name: Scott Twito
Email: stwito@co.yellowstone.mt.gov
Phone: (406) 670-2000
City, State: Billings
Written Statement: I support HB 391. There should be enhanced penalties in the State of Montana for an offender who distributes an illegal substance to a person and that substance kills that person.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

repair.org

February 23, 2021

Testimony in Favor of Right to Repair for Agricultural and Ranch Equipment HB 390

My name is Gay Gordon-Byrne and I am the Executive Director of the Digital Right to Repair Coalition also known as Repair.org. We are a 501 c6 Trade Association founded with the express purpose of supporting repair-friendly legislation, regulations and standards.

Our members fix the things we buy. Some of our members repair in-warranty goods on behalf of manufacturers, others specialize in repairing circuit boards, others in buying and selling used equipment around the world, and others strip old equipment for parts and process the remains. We know how complex electronics are designed, manufactured, repaired and recycled.

Gadgets are complex, but repair is not. Manufacturers have always created diagnostic tools to make diagnosis and repair of their products safe and efficient. Repair has been fully legal since the dawn of the computer age, and should remain so as part of the ordinary rights of owners to control their property. The shape, size, application or cost of equipment is irrelevant -- repair is essential to ownership.

"If you can't fix it -- you don't own it"

HB 390 is not about any specific technology, it is about contracts that undermine the rights of the owner to repair their property. Copyrights, patents and trade secrets are not altered. EPA or other regulations are not altered. This bill stops the use of hidden or non-negotiable contracts to alter the ability of the farmer or rancher to repair their property.

#1. OEMs sell equipment outright, but fail to tell their customers that they will have to agree to a separate software license agreement to activate their purchase, or may be required to buy all future repair services. These terms fall easily into the definitions of Unfair and Deceptive Trade Practises under Section 30-14-111. Farmers and ranchers, even the largest, cannot negotiate contracts as peers with vendors that can literally disable, turn off, or simply slow walk repairs essential to the farmer. Only the legislature can protect Montanans from these repair monopolies.

#2. OEMS use contracts that reference additional agreements that are not disclosed until after the purchase. These contracts are so difficult to dig out that farmers and ranchers will never be able to discern pre-purchase if they could buy a product with preferable terms and conditions. The free market cannot function without key information that has been hidden away, another form of deception under the statute.

#3. OEMS sell equipment and then add terms and conditions that remove the common rights of ownership specifically control over repair. Yet under ownership law, owners are responsible for themselves and their property. Our systems of accounting, taxation and even personal injury law are based on ownership. When OEMS add contract terms that imply the customer is not the owner, such as any limitations repairing or restoring software to its original, these are rights that belong to the owner and not the OEM or the Dealer.

#4. OEMS have been using an "End User License Agreement" to insert terms and conditions which are never made clear pre-purchase, are written in dense legal language intended to hide and obfuscate the intent, and aren't negotiable. Worse -- these contracts are activated by turning on the machine. This is an abuse of customer rights and is deeply dishonest. Consumers deserve a consistent legal framework for making purchases. Abusive contracts should not be tolerated for any OEM, large or small. OEMs that determine they need to further protect their licensed IP beyond federal copyright law have the option of remaining the owner and renting the product.

#5. OEMs try to avoid as much potential exposure to personal injury litigation by disclaiming every possible potential problem up to the limit of state law. These terms and conditions are in every contract because manufacturers cannot afford to be responsible for the errors of their customers. OEMS do not want to be actually responsible for consumers hurting themselves -- they need to focus on their real responsibility to make sure products are designed and manufactured correctly and promptly repair any defects.

Right to Repair Updates -- 21 States and 33 Bills and growing.

Right to Repair legislation has been filed in 21 states At least 3 more states are in the final stages of drafting. The majority of these bills include farm equipment because farmers and ranchers are exasperated. These bills would not be filed if farmers were not asking for help. We aren't driving this train -- farmers are. We're doing the best we can to help because we know the problems in and out.

We urge your committee and the Montana house to stand up for farmers and ranchers and pass HB 390.

Regards,

Gay Gordon-Byrne
Executive Director
The Repair Association
ggbyrne@repair.org
518-251-2835 (Office)
201-747-4022 (Mobile)

See Attachment A for further details.

repair.org

Attachment A to Testimony for HB 390 - Agricultural Right to Repair
February 23, 2021

Monopolized Repair is Bad Policy

Repair monopolies are easy to establish because consumers cannot build their own electronic parts, tools, diagnostics or firmware to fix their products. When it comes to any electronic parts, we are all totally dependent on manufacturers, all of which have a very strong financial incentive to restrict repairs.

Monopoly Advantages for Manufacturers:

a) Manufacturers can charge any fee they want for their services. The only alternative is to buy a new machine.
b) Limit the number of people that can be trained or "Authorized" to make repairs - retaining a labor monopoly and adding to the need to deal only with the dealership.
c) Refuse to produce spare parts at any point in time - limiting useful life and driving new sales.
d) Cease making safety and security updates at any time - limiting useful life and driving new sales.
e) Manipulate trade-in pricing to control the used market so that late-model tractors do not appear on the market as competitive lower-cost options.

Arguments against Right to Repair:

We've had several years of experience debunking opposition arguments from multiple industries. For the past 8 years we've yet to hear a coherent argument explaining how repair monopolies are good for consumers. There aren't any actual "Reasons" but there are a host of projections and assertions - none of which survive examination.

Opposition to Right to Repair for Agriculture has publicly focused on three assertions:

1. "Special interest groups" (farmers?? repair.org???) behind these bills only want to be allowed to gain access to **steal valuable source code.** Not so.
    a. The bill specifically disclaims any interest in source code

b. The only software requirement is the ability to restore existing embedded software back to its original state. Restoration is impossible without this access.

c. Embedded software (aka firmware) is integrated into the machine and parts. There is no reason to steal embedded software or firmware -- it is already there.

d. Defects in design or manufacturing are often resolved by providing "updates" to embedded software. The word "Updates" implies some new features are being delivered at no charge, but this is not the case. Updates are ALWAYS fixes to known problems, or in the case of Payload files, updates activate new (purchased) configurations.

2. Farmers will use repair documentation to **illegally tamper with emissions**, The environment will be harmed, and Dealers won't be able to sell used equipment as easily. Not so.
    a. Tampering with emissions is not "Repair" as defined in the bill. Tampering has been going on for years without access to repair materials. Emissions tampering is not made legal by this bill.

    b. The US Copyright Office has made specific exemptions to copyright law to broadly enable farmers to repair their tractors, including breaking digital locks, for purposes of repair.. This same ruling also requires the farmer to comply with all federal and state laws including EPA requirements. Nebraska Senators cannot alter federal law.

    c. The schedule of fines from the EPA includes per incident fines for farmers separate from fines on OEMs and dealerships. We have not seen that Dealerships have been deputized by the EPA to enforce federal law.

    d. Used market transactions are not exclusive to dealers -- farmers buy and sell products directly and through 3rd parties. EPA requirements still apply.

    e. Secondary market values are supposed to be the result of a free and open market for willing buyers and sellers. Dealers should already be taking equipment condition into account when offering a trade-in.

3. **Farmers will become unsafe and people will die.** Not so.
    a. Farmers with the same tools and diagnostics as available to the Dealership will be just as capable of complete repairs as dealership technicians. Refusal to provide essential diagnostics only increases the incentive to find alternatives.

    b. OEMs create diagnostic software and tools so that their technicians can efficiently perform problem determination, replace the failed part, download any necessary defect, safety and security patches and fixes, and then re-execute

diagnostics to make sure the machine is working correctly. Once all diagnostics run correctly, the OEM itself considers the machine "completely" repaired. "Incomplete" repairs of electronics would be easily identified by running diagnostics.

Enduring conflict of interest between OEMS and Farmers

OEMS are in the business of designing and selling new equipment. Keeping older equipment in service, such as with a robust culture of repair, is not in their best financial interest.

Farmers have opposite interests -- keeping their investments running as long as possible and at the lowest possible cost. This is why a voluntary solution has been so difficult to achieve -- for OEMs to be "happy" - farmers will be unhappy. It is for you as legislators to decide who gets to be "Happy".

Most of our members are not farmers. We support the right of farmers to repair and sweat their assets because it's their property and their investment just as we do every other product made with a digital electronic part.

There is value to being the first state to pass this essential and common sense legislation. Repair companies located in Montana will be able to support the region with a home base in Montana. There will be more jobs, and likely more job training focused in Montana as a nexus for those jobs and related purchases and taxes.

Thank you for your consideration.

Please let me know if you have any questions.

Regards,

Gay Gordon-Byrne

Gay Gordon-Byrne
Executive Director
Repair.org
ggbyrne@repair.org
518-251-2837 (office)
201-747-4022 (mobile)

Author of "Buying, Supporting Maintaining Software and Equipment - an IT Manager's Guide to Controlling the Product Lifecycle" (copyright 2014 CRC Press)

ONEOK

WITNESS STATEMENT

Written Testimony Provided To:
House Judiciary
By Danette Welsh
February 24, 2021

Regarding: House Bill No. 481

Mr. Chairman and committee members,

For the record, my name is Danette Welsh and I serve as director of government relations of ONEOK, Inc. ONEOK owns and operates natural gas gathering pipelines and processing facilities, and natural gas liquids transmission pipelines throughout eastern Montana. ONEOK appreciates the opportunity to provide comment in support of HB 481 which will help protect critical infrastructure within the state of Montana.

The safety of our employees, assets, environment, neighbors, and the public cannot be compromised, and we appreciate the added protections HB 481 offers by deterring and penalizing those who may willingly and knowingly damage or otherwise compromise that safety. Willfully damaging actions, organized and unorganized, have occurred just in the past two years in neighboring states including North Dakota and Wyoming. These actions have resulted in economic, social and environmental impacts. HB 481 will provide recourse and true accountability for these actions, and hopefully provide enough deterrence to stop the actions from happening at all.

We thank the sponsor for bringing this legislation forward and encourage the House Judiciary committee to support HB 481. I am available to provide additional information or answer any questions at the contact information provided below.

Danette Welsh
Director, Government Relations
ONEOK, Inc.
(701) 471-9490
dwelsh@oneok.com

WITNESS STATEMENT

To the House Judiciary Committee

Opposition to House Bill 481.

Dear Committee Members,

House Bill 481 would threaten to criminalize people rallying against corporate projects by creating a new special protected category of "critical infrastructure" for energy projects.

The bill would impose felony charges and steep fines on anyone who trespasses on or tampers with energy infrastructure. But trespassing and vandalism are already illegal and punishable by steep fines and jail time under existing Montana law. The real impact of this bill is its threat to free speech, freedom of association, and the unintended consequences the bill could have on everyday Montanans.

This bill would have huge repercussions and unintended consequences for farmers and ranchers who have some form of "critical infrastructure" on their land. Sometimes ranchers accidentally hit buried pipelines, or run over exposed pipe with a tractor. This bill could make landowners vulnerable to felony prosecution if they inadvertently "disrupt" the energy infrastructure on their own land. It even potentially criminalizes "entering property containing a critical infrastructure facility," which in the case of a rancher or farmer, could mean their own land.

If passed, House Bill 481 would demote ranchers and property owners beneath energy interests in negotiations over access to leasing sites on their own property. HB 481 also threatens to bankrupt organizations deemed "guilty by association" for acts of vandalism that they did not cause – with fines of up to $1.5 million.

I **believe in the right to peaceful protest and legal assembly**. This bill seems designed to scare Montanans out of exercising their Constitutional rights by threatening that we could end up liable for **someone else's crime**. And Montana's farmers and ranchers could end up paying excessive fines and facing criminal consequences simply for working their land.

Sincerely,
Robyn Morrison
3430 Kase Rd, Helena, MT 59602

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 3:44 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-581: Revise gun storage laws 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 15:44

Details:
Bill: HB-581: Revise gun storage laws 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Moms Demand Action for Gun Sense in America
Name: Rebecca Squires
Email: bsquires749@gmail.com
Phone: (406) 439-7309
City, State: Helena MT
Written Statement: TESTIMONY OF REBECCA SQUIRES Representing Moms Demand Action for Gun Sense in America HB 581 House Judiciary Committee February 24, 2021

My name is Rebecca Squires. I am a volunteer with Moms Demand Action for Gun Sense in America. I support HB 581 because it provides a strong incentive for responsible gun ownership through the secure storage of guns in the home.

I want to tell you why I am passionate about the secure storage of guns, and why you should be, too. My great-nephew, 9-year-old Grady, was shot and killed with a loaded handgun that was left on a table in the home of a friend he was visiting. If that gun had been responsibly stored by the adults in the home, Grady would be alive today.

Grady was my niece's son, my sister's grandson. It was just before he was to start 3rd grade.

When my sister called on that hot summer afternoon and told me "Grady's gone," all I thought at first was maybe he had run away from home. It took a few moments to sink in that he had been shot and killed, but after it did, it brought me to my knees. I couldn't stop shaking and crying. My niece and my sister wanted me to come to Belgrade for support, but I knew I was in no condition to drive. While I waited for my husband to come home from work so he could drive us there, all I could do was pace and cry.

A lot of what happened after that phone call is a blur. When the crime lab released Grady's body and we could go see him, I just couldn't do it. My sister couldn't either, but she was outside the room when his mom saw her darling boy for the first time since he was shot in the head. My sister's description of Kristina wailing in that moment still brings tears to my eyes. No parent should have to bear witness to what she did that day.
Grady was a special kid. He loved the color blue, insects, rocks, and especially, trees. Oh, and dirt biking, of course! But, most importantly, Grady was kind. If he saw another kid being bullied, he always stepped in, and he helped get a Buddy Bench installed at his school, where kids can go if they're lonely and need someone to play with. I have no doubt that he would have made the world a gentler, more inclusive place if he'd only been given the chance. But because of what happened that August day, that opportunity was stolen from him. The world will always be a little less bright because of it.
It's been 5 years since Grady's death. He would have been 14 in January. His family will not get to see him grow up. No other family should have to endure the heartache of losing a child the way we lost Grady. I do not know why the adults in that house were such irresponsible gun owners. But there is no question that a substantial fine for keeping a firearm where a minor is likely to gain access will result in more gun owners storing their firearms responsibly, and fewer deaths like Grady's.

Every year, about 15 children and teens in Montana die by guns. And I can testify to the fact that each of those deaths has a significant impact on the child's family, friends, school, and community. Firearms are the second leading cause of death for children and teens in Montana. You can do something about those terrible statistics. Studies have found that households that locked both firearms and ammunition have a significantly lower risk of firearm deaths than those that locked neither.

I know you can't bring Grady back, but there is something you can do for other Gradys in Montana – please support this bill and take an important step to remind us all that the right to bear arms includes the responsibility to keep them from needlessly killing our children.

Thank you for allowing me to share our tragedy. Please vote for HB 581 to help prevent future ones.

Files:

Testify via Zoom: No

Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:00 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:00

Details:
Bill: HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Laurie Little Dog
Email: LaurieLittleDog@gmail.com
Phone: (406) 308-3378
City, State: Bozeman, MT
Written Statement: My name is Laurie Little Dog and I rise in strong opposition to HB 481.
This criminalizes the People's right to defend tribal homelands and additional efforts that erode the land for future generations.
Please oppose HB481.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:06 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:05

Details:
Bill: HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Hannah Hernandez
Email: precambrianmt@hotmail.com
Phone: (406) 638-1149
City, State: Troy, MT
Written Statement: To House Judiciary Committee,

Oppose HB 481.

This bill is an attack on FREEDOM. This bill adds additional criminal penalties for individuals who participate in protests involving "critical infrastructure." This bill is aimed at individuals who are protesting activities that may harm the environment and human health by adding additional criminal penalties onto activities that are already illegal. It also allows for charging organizations who are "found to be a conspirator," which is incredibly ambiguous.

It is an inherent right for Montanans to gather and protest. Protesting is one of the most patriotic acts a individual and community can undertake. Protesting is the physical demonstration and expression of liberty. Criminalizing the most basic civil liberty of protesting is what happen in fascist, authoritarian regimes.

Vote NO HB 481.

Thank you.

Hannah Hernandez
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 11:12 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 11:11

Details:
Bill: HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Opening Doors
Name: Josh Butterfly
Email: butterflyjosh4@gmail.com
Phone: (406) 217-6518
City, State: Great falls
Written Statement: This bill targets protesters freedom of speech, freedom of expression and makes it another door way into the Montana's Justice System. We strongly oppose this bill.
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 5:52 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 05:51

Details:
Bill: HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Wood Products Association
Name: Julia Altemus
Email: julia@montanaforests.com
Phone: (406) 241-7047
City, State: Missoula, MT
Written Statement: February 23, 2021

Representative Barry Usher
Chair, House Judiciary
State Capitol, Room 137
Helena, MT 59601

RE: HB 481 Protect Critical Infrastructure

Dear Chairman Usher and Committee:

On behalf of the Montana Wood Products Association, we offer our support for HB 481. With all the uncertainty in our country these days, it is important that we protect Montana's critical infrastructure with deterrents such as fines and imprisonment for those that willfully trespass and destroy property, those that may engage an individual or group to do harm or conspire to do harm.

This is an important bill, and we urge your support.

Sincerely,

Julia Altemus
Montana Wood Products Association
Executive Director
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 23, 2021 7:49 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary Successfully Submitted on 02-23-21 07:49

Details:
Bill: HB-481: Protect critical infrastructure 2021-02-24 07:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: John Rundquist
Email: rundquistador@gmail.com
Phone: (406) 431-5588
City, State: Helena, MT
Written Statement: This bill is redundant as laws already exist for criminal trespass. Further, to include violations for organizations that are suspected conspirators brings ambiguity and could potentially be used as a tool against free speech. This law is an unnecessary big government bill that will accomplish nothing but clogging the courts.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

US Constitution is the law of our land and has been amended many times before to deal with necessary foundational issues. BBA is a foundational issue.

- Our opponents like to sell the false narrative that use of Path B of Article V will absolutely lead to a wide open convention where the BBA topic constraints are certain to be abandoned and a wide-open convention resulting in a totally new constitution results. They will certainly sell this nonsense by arguing that the original 1787 Constitutional Convention was the result of a runaway convention. Fortunately, historical records prove this assertion to be slanderous and false. The delegates to the 1787 Convention in Philadelphia were given a broad mandate from their states to "render the constitution adequate to the urgent needs of the Union." Much scholarly reading on this topic is easily available to clarity this false narrative.

- Our opponents promote the use of Nullification to push back on Federal over reach. I support nullification when appropriate, but realize that while it might be a tool for pushing back against unconstitutional laws, it does not provide any opportunity to make structural changes like a constitutional amendment and the BBA.

- The John Birch Society says if we follow the Constitution and limit congress to its specific enumerated responsibilities, the federal budget will shrink to a small fraction of generated revenues and the budget will have a surplus. The devil is in the details, and JBS never specifically identifies what Federal spending will be eliminated. Nor does JBS provide any details in a plan or any directions on how to accomplish this. The John Birch Society has been preaching this Constitutional purism for around 60 years and the budget problems have exponentially worsened during this span. Where is the success story?

- It is easy for our opponents to sell the SKY IS FALLING false narrative on Article V. Fear is an easy sell to the uninformed. JBS also contends that all Article V applications are the same. They are not.

  On January 6, 2015 the United States House of Representatives began the process of cataloging applications submitted to the House by the state legislatures with the adoption of a new provision in the House's parliamentary rules of procedure. As part of this effort, the law firm Van Sickle-Boughey out of Minot ND was tasked with collecting

the historical records in the states on Article V applications. VSB also created a classification system for such application. The results created 5 classes of applications.

- Class I: A call for a general convention, with no motivating issue listed
- Class II: A call for a general convention, with a separate statement of proposed amendment or explicit statement that the convention may consider other amendments proposed by states
- Class III: A call for a general convention tied to a proposed amendment
- Class IV: A call for a convention, with language aimed to limit the convention to the issue presented
- Class V: A call for a convention, with language to rescind the application from consideration for a convention if any other topic is to be covered.

  - Our opponents regularly combine all applications, 1-5 and present their arguments against Class I weakness while projecting these arguments onto all classes and all application. This is dishonest and unethical. Don't let them fool you.

Our opponents take glee in calling all Article V applications as applications for a ConCon, which to them is a clever term for Constitutional Convention. I have a different definition for ConCon. It is CONman-CONjob. Don't let them CON you!

There is no easy button. Regardless of how you chose to vote on the final passage of HJ13, failure to move this bill to a full floor debate would be this committees own version of Cancel Culture, or book burning. A full floor debate will heighten the awareness of Article V and the constitution itself. This debate needs to happen. I support moving the debate forward, vote accordingly.

Terry Kramer

6 Aspen Ln

Clancy, MT. 59634

HD 75. SD38

WITNESS STATEMENT

February 24, 2021
House Judiciary Committee
Helena, MT
Room 137 @7:00 am

Honorable Chairman Usher and members of the House Judiciary Committee,

My name is Billy Ross and I'm a licensed Profession Civil Engineer living in Great Falls. I'm a registered Montana voter. As a conservative Republican, I'm 100% all for a balanced budget and I'm appalled by the deficit spending that the federal government (both Republicans and Democrats) has become addicted to. Another $1.9 *trillion* in deficit spending is about to be borrowed. These are borrowing obligations (debt) that we will saddle our Grandchildren's grandchildren with! This type of deficit spending poses not only a very real and significant financial risk to our county, but also a significant national security risk. When the country is broke/bankrupt from this deficit spending, how are we going to be able to put fuel in our F-35 and F-22 fighter jets? In fact, how are we going to even maintain the readiness of our troops and equipment? Well, the short answer is that we will not be able to do so. The result? China completes the take-over of the South China Sea and Russia is empowered to continue the aggression southward that they started in the Ukraine in 2014. Add to that the economic misery at home with inflation, unemployment, increased hunger and homelessness; the list goes on…

These issues can be solved by having the right leadership in Washington. HOWEVER, the solution is <u>not</u> to open up our United States Constitution for change to fix this one particular (but very important) issue of a balanced budget.

Article V of the Constitution calling for a Constitutional Convention simply cannot be limited to the narrow scope of a balanced budget; once the Constitution is opened for change it is <u>FULLY</u> and completely opened to change at essentially all levels.* This is a classic case of the camel poking his nose underneath your tent; if you let the camel do so you then will soon find the camel making himself right at home *inside* your tent.

Honorable Chairman Usher and members of the House Judiciary Committee, I very respectfully request that you vote against – to vote NO - on HJ 13. Let's work together to solve the deficit spending problem while also keeping the camel from coming inside our tent and trampling all over our great Constitution.

Thank you very much for considering these comments today.

Billy Ross, P.E (PE #19605)
215 38th Ave. NW
Great Falls, MT 59404
bill.ross@safety-kleen.com

* **The Article V Convention: Contemporary Issues for Congress**: Thomas H. Neale - Specialist in American National Government, March 7, 2014, Congressional Research Service, 7-5700 www.crs.gov R42589

"In the absence of guidance from Congress, the state legislatures have historically forwarded their applications for an Article V Convention to an almost bewildering range of congressional officers and offices. For practical purposes, this is an area where the Senate and the House of Representatives, acting either jointly or individually, might choose to designate a single official or office to whom such applications should be addressed, such as the Secretary of the Senate and the Clerk of the House of Representatives, or, alternatively, the Speaker and the President pro tempore of the Senate. The law governing the transmission of state electoral college proceedings offers a potential example: in this instance, each state is required to transmit the vote of its electors to the President of the Senate (recall that the Vice President presides over the joint electoral vote count session in his capacity as President of the Senate), the secretary of state of their state, the Archivist of the United States, and the judge of the federal court in the district in which the electors assemble.153 By designating specific officials, the statute avoids the uncertainty faced by states as to whom their electoral college results should be addressed, and by specifying multiple recipients, it ensures that the certificates will be safely delivered and retained. Once they are received by Congress, state applications for an Article V Convention are classified as "Memorials."154 As such, they may be addressed to the House or Senate as a whole, to the Speaker or the presiding officer of the Senate, or to individual Senators or Representatives. Memorials are printed on an occasional basis in the Congressional Record after they have been received.

"The Senate assigns a "POM" (petitions or memorials) number to each memorial and prints the full text of memorials received from state legislatures from time to time under the heading "Petitions and Memorials" in the Record, as authorized by Rule VII of the Standing Rules of the Senate.155

"House practice differs somewhat: memorials are customarily presented by the Speaker, in accord with Rule XII, clause 3 of the Rules of the House. They are assigned a number, and printed and recorded separately from other communications in the Congressional Record, under the heading "Memorials." Unlike the Senate, the House includes only a digest of the state measure.156"

---

153 3 U.S.C. 11.

154 For additional information, see CRS Report 98-839, Messages, Petitions, Communications, and Memorials to Congress, by R. Eric Petersen.

155 See Standing Rules of the United States Senate, Rule VII, paragraph 1, available at http://rules.senate.gov/public/ index.cfm?=Rule VII.

156 See Rules of the House of Representatives, Rule XII, clause 3, at http://www.rules.house.gov/singlepages.aspx? NewsID=133&rsbd=165.

The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress

Thomas H. Neale
Specialist in American National Government

March 7, 2014

Congressional Research Service
7-5700
www.crs.gov
R42589

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Article V of the U.S. Constitution provides two methods of proposing amendments. First, Congress, with the approval of two-thirds of both houses, may propose amendments to the states for ratification, a procedure used for all 27 current amendments. Second, if the legislatures of two-thirds of the states apply, 34 at present, Congress "shall" call a convention for considering and proposing amendments. This alternative, known as an Article V Convention, has yet to be implemented. This report examines the Article V Convention, focusing on contemporary issues for Congress. CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , examines the procedure's constitutional origins and history and provides an analysis of related state procedures.

Contemporary developments give evidence of renewed interest in the Article V Convention alternative as emerging Internet- and social media-driven public policy campaigns embrace the convention alternative as a vehicle to bypass perceived policy deadlock at the federal level. In 2011, individuals and advocacy groups ranging on the political spectrum from conservative libertarian to progressive joined in a 2011 conference, "ConConCon," to discuss and promote an Article V Convention. In November 2013, the Ohio legislature applied for an Article V Convention to consider a balanced federal budget amendment, the first new state application received since 1982. On December 7, 2013, a group of 100 state legislators convened to promote an Article V "convention of states," while a new policy advocacy group of the same name is promoting an Article V Convention to propose amendments that "impose fiscal restraints and limit the power of the federal government." Earlier in 2013, the Compact for America, a group initially sponsored by the Goldwater Institute, proposed the "Compact for a Balanced Budget." This initiative would involve an interstate compact that would provide a single package by which states would call for a convention, agree to convention format, membership and duration, agree to and propose to Congress a specific balanced budget amendment, and prospectively agree to ratify the said amendment.

The Constitution provides a brief description of the Article V Convention process, but leaves many questions unanswered. If an Article V Convention seemed imminent, Congress would face a range of issues and questions associated with a convention summons. These would include the following: Is Congress required to call a convention? What constitutes legitimate applications from the states, and what authority does Congress have to decide this question? What sort of convention would it be: "general," open to consider any issue, or "limited," confined to a specific issue? Could a "runaway" convention propose amendments outside its mandate? Is Congress required to submit to the states *any* amendment proposed by an Article V Convention? Does Congress establish the procedures for a convention, and has it addressed this issue in the past? How should Congress process state applications for a convention? How many delegates should a convention include? How should the states vote? How long should the convention last? Could Senators and Representatives serve in an Article V Convention? Would a simple majority suffice to propose amendments, or is a super-majority appropriate? Would the District of Columbia, U.S. territories, and other associated jurisdictions participate? What would the President's role be?

If Congress were called on to summon a convention, it could consult a range of information resources in fashioning its response. These include the original intent of the founders, scholarly works cited in this report and elsewhere, historical examples and precedents, and the work of previous congressional examinations of the issue from the 1970s through the 1990s.

Contents

Introduction 1
Background: Article V of the U.S. Constitution in Brief 1
Congress and the Article V Convention in the 21st Century 3
- Congress: Key Actor in the Article V Convention Process 3
- Traditional Deterrents to an Article V Convention 4
- Emergence of Technology-Driven Issue Advocacy—A Model for Contemporary Article V Convention Supporters? 5
- 2011-2012: Revival of Interest in the Article V Convention Option 6
- 2013-2014: Most Recent Article V Convention Developments 8
  - Ohio Legislature Applies for an Article V Convention, November 2013 8
  - "Mount Vernon Conference," December 2013 9
  - Compact for America's Compact for a Balanced Budget Amendment: A "Turn-Key" Plan for an Article V Convention 10

The Role of Congress in the Article V Convention Process 16
- Is Congress Required to Call a Convention? 16
- What Sort of Convention Does Article V Authorize? 18
  - The General Convention 19
  - The Limited Convention 21
  - The Runaway Convention 23
  - An Article V Convention Limited to the Consideration of a Specifically Worded Amendment?—H.J.Res. 57 in the 112th Congress 24
- Is Congress Required to Propose Ratification of Amendments Approved by a Convention? 26
- Additional Issues for Congress 28
  - A Role for the President? 28
  - "Checks and Balances" in the Article V Amendment Process 31
  - Details of the Article V Convention Process — Is Congress a Clerk or the Guardian? 33
  - Providing a Framework: The Precedent of Congressional Proposals to Shape an Article V Convention 34
  - What Are the Current Procedures for Receipt and Processing of State Applications by Congress? 36
  - Could Senators and Representatives Serve as Delegates to an Article V Convention? 37
  - Convention Procedures: Ancillary Issues for Congress 38

Concluding Observations 40

Contacts

Author Contact Information 41

Introduction

Article V of the U.S. Constitution provides two methods by which the nation's founding charter may be amended. The first, Amendment by Congressional Proposal, requires the adoption of an amendment or amendments by a two-thirds vote in both houses of Congress; the second, generally referred to as the "Article V Convention" method, authorizes the states to apply to Congress for a convention for proposing an amendment or amendments. If the legislatures of two-thirds of the states, 34 at present, do, in fact, apply for a convention, Congress is obliged to convene one. Both methods then require the approval of three-fourths of the states, 38 at present, in order to become part of the Constitution.

While the Article V Convention option was largely dormant for more than two decades after the early 1980s, there is evidence of revived interest both in new constitutional amendment proposals and in the use of the Article V method as a grass-roots or state-driven alternative that could empower a convention to propose amendments without securing a two-thirds majority in both chambers of Congress. Indeed, the evidence of the founder's actions at the 1787 Constitutional Convention suggests that they intended the Article V Convention as a "way around" a Congress unwilling to consider an amendment or amendments that enjoyed broad support. Whether current efforts to promote an Article V Convention enjoy sufficiently broad support to make serious progress toward their goal remains to be seen.

In the past, the need to mobilize public support, coupled with the measured pace of state legislative action, guaranteed that an organized movement for an Article V Convention would take considerable time to develop public awareness and support and move the application process forward. Over the past 15 years, however, extraordinary advances in communications technology may have altered this calculation. The swift rise of Internet- and social media-driven policy campaigns suggests that the time-consuming organization and development once considered prerequisite to an effective Article V Convention advocacy movement could be greatly compressed in the contemporary context, and that much of the infrastructure previously thought necessary for such a campaign might be avoided altogether.

This report opens with a brief overview of the provisions of Article V of the U.S. Constitution, which established the alternative procedures for proposing amendments to the states. A companion report, CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , provides more comprehensive information on the Article V Convention mechanism, including a detailed examination of constitutional and statutory provisions, constitutional origins and original intent, case studies of major campaigns for an Article V Convention, and a review of the role of the states in the process.

Background: Article V of the U.S. Constitution in Brief

Article V of the U.S. Constitution provides two methods for amending the nation's fundamental charter. The first, or "Congressional" method, authorizes proposal of amendments by Congress:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, ... which ... shall be valid to all Intents and Purposes, as

> Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress....[1]

The second, or "Article V Convention" method, requires Congress, "on the Application of the Legislatures of two thirds of the several States," 34 of 50 at present, to call "a Convention for proposing Amendments...."

Amendments ratified by the states under either procedure are indistinguishable and have equal force; they are both "valid to all Intents and Purposes, as Part of this Constitution ...."[2] Both modes of amendment share key constitutional requirements:

- Amendments proposed either by Congress or an Article V Convention must be ratified by three-fourths of the states, 38 at present.
- Congress is authorized to choose the method of ratification in the states. The options are ratification by ad hoc *conventions* called by the states for the specific purpose of considering the ratification, or ratification by the legislatures of the states. The three-fourths requirement applies in both instances.[3]

In addition, three elements not included in the Constitution have also become "standard procedure" when Congress proposes amendments. As precedents, they would also likely be followed for an amendment or amendments proposed by an Article V Convention.[4]

- First, amendments are not incorporated into the existing text of the Constitution as adopted in 1788, but rather, are included as supplementary articles.[5]
- Second, Congress may set a time limit on the ratification process. Beginning with the 18th Amendment, proposed in 1917, and continuing with the 20th through 26th Amendments,[6] Congress specified that amendments must be ratified within seven years after being proposed in order to become effective.[7]

---

[1] U.S. Constitution, Article V.

[2] Ibid.

[3] To date, Congress has specified ratification by ad hoc state convention for only one amendment, the 21st, which repealed the 18th "prohibition" amendment. This is discussed at greater length later in this memorandum.

[4] A fourth element applies to amendments proposed by Congress: the congressional vote must be by *two-thirds vote of the Members present and voting, a quorum being present* in both the House and Senate, in order to propose an amendment. This practice was endorsed by the Supreme Court in the *National Prohibition Cases*, of 1920 (253 U.S. 350, 386 (1920)).

[5] James Madison, sponsor in the House of Representatives of the amendments now known as the Bill of Rights, suggested they should be incorporated in the body of the Constitution. The House decided instead to add them to the end of the Constitution as additional articles, a precedent followed for all subsequent amendments.

[6] The 27th Amendment, the most recently ratified, was proposed to the states in 1789 *without* a seven-year time limit on ratification. It requires that congressional salary increases can take effect only after an intervening election. Despite having been pending for 203 years, this amendment was revived, ratified by more states, and was ultimately declared to have been ratified in 1992.

[7] The seven-year requirement was incorporated in the body of the amendment in the 18th and 20th through 22nd Amendments. For subsequent amendments, Congress concluded that incorporating the time limit in the amendment itself "cluttered up" the amendment. Consequently, the 23rd through 26th Amendments placed the limit in the authorizing resolution, rather than in the body of the amendment. (See "Article V: Ratification" in U.S. Congress, Senate, *The Constitution of the United States, Analysis and Interpretation*, 108th Congress, Senate Document 108-17 (Washington: GPO, 2004), available at http://www.gpoaccess.gov/constitution/pdf2002/015.pdf.

- Finally, the Constitution does not require approval of proposed amendments by the President, who has no official function in the process of proposing an amendment to the states. The chief executive's approval or signature has no bearing on the process, and he or she cannot veto or pocket veto a proposed amendment that has been approved by the requisite congressional majorities, or proposed by an Article V Convention.[8]

The first method has been used by Congress to submit 33 amendments to the states, beginning with the Bill of Rights in 1789. Of these, 27 amendments were approved by the states; 26 of them are currently in effect, while one, the 18th Amendment that prohibited the "manufacture, sale, or transportation of intoxicating liquor," was ultimately repealed by the 21st Amendment.

The Article V Convention option has yet to be successfully invoked, although not for lack of activity in the states. Three times in the 20th century, concerted efforts were undertaken by proponents of particular amendments to secure the number of applications necessary to summon an Article V Convention. These included conventions to consider amendments to (1) provide for popular election of U.S. Senators; (2) permit the states to include factors other than equality of population in drawing state legislative district boundaries; and (3) to propose an amendment requiring the U.S. budget to be balanced under most circumstances.[9] The campaign for a popularly elected Senate is frequently credited with "prodding" the Senate to join the House of Representatives in proposing what became the 17th Amendment to the states in 1912, while the latter two campaigns came very close to meeting the two-thirds for an Article V Convention in the 1960s and 1980s, respectively.[10]

Congress and the Article V Convention in the 21st Century

Three decades have passed since the high-water mark of the balanced budget amendment convention campaign in the 1980s. Few current Members of either chamber have experienced the prospect of an Article V Convention. After 30 years of relative inactivity, however, there is evidence of renewed public interest in the convention alternative.

Congress: Key Actor in the Article V Convention Process

What compelling interest, among the many competing demands for its time and energy, does Congress have in the Article V Convention mechanism? There is little to command its interest if the Article V Convention remains, as it has for the past three decades, a constitutional footnote. In the event of revived pubic interest in this issue, however, Congress might choose to reexamine its constitutional duties under Article V.

[8] This issue was determined as part of a 1798 Supreme Court decision, *Hollingsworth v. Virginia*, 3 Dall. (3 U.S.) 378 (1798).

[9] For more detailed information on the origins and history of the Article V Amendment process, please consult the companion report, CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , by Thomas H. Neale.

[10] By 1969, 33 states had applied for a convention to consider amendments related to state legislative reapportionment. Between 1975 and 1983, 32 petitioned for a convention to consider a balanced budget amendment.

First, Article V delegates important and exclusive authority over the amendment process to Congress. As noted earlier in this report, first among these are the right to propose amendments directly to the states for their consideration on the vote of two-thirds of the Members of the House of Representatives and the Senate and the responsibility for summoning a convention for consideration of amendments on application of the legislatures of two-thirds of the states *and* submitting any amendments proposed by an Article V Convention to the states for their consideration.

Second, while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states.

Traditional Deterrents to an Article V Convention

It may be argued that there is no immediately pressing need for Congress to examine its Article V options and responsibilities. Historical precedent suggests that attaining petitions from two-thirds of the states in a timely manner is a difficult obstacle, as demonstrated by the several unsuccessful convention drives in the latter part of the 20th century. As noted earlier, these fell short of the two-thirds mark, despite the vigorous efforts of organized support groups over a period of several years, and until recently, there has been little apparent interest in the Article V Convention mechanism in the states since the 1980s. Judging by the historical record, the process might arguably be described as a footnote to constitutional history.

The obstacles to any campaign for an Article V Convention remain daunting even in the face of rapid change: the Constitution sets a considerable hurdle for the Article V Convention process by requiring that applications for a convention be made by the legislatures of at least two-thirds of the several states. Further, as this report demonstrates, there are competing schools of thought on how a convention should be called, what would be an appropriate mandate for the convention, the scope of any amendments it might propose, and, perhaps most important, the role of Congress in all these questions. Moreover, any amendments proposed would face the same task of securing approval of three-fourths of the states before they were ratified.

The measured pace of the legislative process in the states has also traditionally served as a check to haste in calling such a convention.[11] For instance, in the case of the balanced budget amendment convention drive, it took seven years for an organized campaign to gain convention applications from 32 of the necessary 34 states.[12] Nevertheless, given the extraordinary speed and

[11] As Supreme Court Justice and constitutional commentator Joseph Story noted, "The great principle to be sought is to make the changes practicable, but not too easy; to secure due deliberation, and caution; and to follow experience, rather than to open a way for experiments, suggested by mere speculation or theory." See Joseph Story, *Commentaries on the Constitution of the United States* (Boston: Hilliard, Gray & Co., 1833), §1821. Available in *The Founders Constitution*, a joint venture of the University of Chicago Press and the Liberty Fund, Web edition, at http://press-pubs.uchicago.edu/founders/documents/a5s12.html.

[12] See under "The Balanced Budget Amendment: 1975-1983" in CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , by Thomas H. Neale. While most state legislatures convene annually, their sessions are frequently limited by law; 32 states place some form of time constraint (continued...)

flexibility of contemporary social media and communications technology, interested organizations could conceivably launch an Article V Convention campaign for a specific amendment or amendments, or perhaps for a general constitutional convention, within a shortened time frame. In the 1960s, 1970s, and 1980s, it took time for "grass roots" efforts to emerge, form organizations to promote their causes, communicate with like-minded groups, undertake campaigns in state legislatures, and generally to learn and perfect the ancillary skills necessary for nationwide issue advocacy. Today, in contrast, the greatly enhanced level of communications technology and widespread use of social media arguably provide a ready-made infrastructure for emerging advocacy campaigns.

Emergence of Technology-Driven Issue Advocacy—A Model for Contemporary Article V Convention Supporters?

Communications technology has greatly advanced in the three decades since the campaign for an Article V balanced budget convention gained its last state application in 1983. The development and subsequent ubiquity of e-mail and social media have already provided a new and compelling model for issue-driven mass policy advocacy campaigns. The emergence of social-media driven groups such as MoveOn.org, the Tea Party movement, and Occupy Wall Street serve as the most obvious examples. Their swift rise, combined with widespread publicity, and a certain degree of success, suggest the possibility that a contemporary campaign, using the communications strategies and tools of the age, could arguably move the issue of an Article V Convention to the forefront of public awareness on a shorter cycle than was possible for previous campaigns.

In an era of instant interpersonal electronic communication, e-mail and other social network media can facilitate remarkably rapid growth in awareness of a political phenomenon. For instance, MoveOn.org emerged in 1998 as an ad hoc online coalition opposed to the impeachment of President Bill Clinton; it has since grown to a membership of 5 million.[13] More recently, the Tea Party movement originated in late 2008 with online discussions on conservative-oriented social networking sites and frequent conference calls among organizers. On February 19, 2009, a cable network business commentator made an on-air call for rallies to oppose government spending; his emotionally charged remarks were picked up by various websites and went "viral." In just two months the newly named "Tea Party" movement was able to rally over 600,000 supporters in more than 600 demonstrations around the nation.[14] Occupy Wall Street was started by Canadian activists on July 13, 2011;[15] by September 17, it had begun its protests in New York

(...continued)

on their sessions, frequently limiting them to as little as 60 to 90 session days. Given the generally hectic pace and urgent demands faced by most state legislatures during their sessions, it seems unlikely that Article V convention proposals could make it through the legislatures of 34 states in one year. Judging from previous efforts, it appears more likely that even a well-publicized and popular Article V petition drive would require two to five years of state legislative action before it approached "critical mass." See *The Book of the States*, 2009 edition, volume 41 (Lexington, KY: Council of State Governments, 2009), pp. 83-85.

[13] Jonathan Rauch, "How Tea Party Organizes Without Leaders," *National Journal*, September 11, 2010, available at http://www.nationaljournal.com/njmagazine/cs_20100911_8855.php.

[14] Ibid.

[15] "Occupy Wall Street To Turn Manhattan Into 'Tahrir Square'" *New York Times*, September 17, 2011, available at http://newyork.ibtimes.com/articles/215511/20110917/occupy-wall-street-new-york-saturday-protest.htm.

City, and within a month, it claimed to have mounted demonstrations or other protests in 70 major cities and more than 600 communities throughout the country.[16]

Advances in communications technology and the examples of such phenomena as the Tea Party and Occupy Wall Street movements could provide a model for present-day advocates of the Article V Convention alternative. Notwithstanding the deterrents to an Article V Convention cited earlier in this report, the methods and technologies identified above could arguably be harnessed to promote a credible campaign in a much shorter period of time than was the case with previous convention advocacy movements.

As the institution authorized by the Constitution to summon, and, arguably, to plan for and guide an Article V Convention, this prospect could present Congress with a range of consequential issues in a time frame that could require its urgent consideration. Under these circumstances, Congress might be called on to revisit the Article V Convention issue for the first time since the 1980s.

2011-2012: Revival of Interest in the Article V Convention Option

After more than 20 years of inactivity, there is evidence of renewed interest in the Article V Convention option among various policy advocacy groups. The convention method may be particularly attractive on several grounds: it springs unquestionably from the "original intent" of the founders; the need for state petitions suggests widespread popular grass-roots origins; and the prospect of proposing amendments directly to the states offers an alternative to what some have characterized as a legislative and policy deadlock at the federal level.

One organization, the Friends of the Article V Convention (FOAVC), a self-described non-partisan group, has been a persistent advocate of the convention option since at least 2007. Its website[17] includes lists of what the organization claims are over 700 state applications for a convention.

In a subsequent development, in September 2011, a diverse coalition, including Harvard Law School; the Tea Party Patriots; and Fix Congress First, a self-described "network of activists fighting the corrupting influence of money and politics,[18] sponsored a Conference on the Constitutional Convention—"ConConCon"—at Harvard.[19] This colloquium investigated constitutional and political questions associated with an Article V Convention, identified state and local grass-roots planning for a convention, and considered the question of proceeding with a convention campaign.[20]

Also in 2011, the Tax and Fiscal Policy Task Force of the American Legislative Exchange Council (ALEC) released *Proposing Constitutional Amendments by a Convention of the States, A Handbook for State Lawmakers*. This publication, which provides an overview of the Article V

[16] Joanna Walters, "Occupy America: Protests Against Wall Street and Inequality Hit 70 Cities," *The Guardian* (U.K.), October 8, 2011, available at http://www.guardian.co.uk/world/2011/oct/08/occupy-america-protests-financial-crisis.

[17] See Friends of the Article V Convention, available at http://www.foavc.org/.

[18] This group has renamed itself Rootstrikers, available at http://rootstrikers.org/.

[19] Conference on the Constitutional Convention, available at http://conconcon.org/.

[20] Ibid., available at http://conconcon.org/agenda.php .

Convention question, includes such elements as an overview of the process; the question of judicial review; a step-by-step guide to the state application process; an examination of the "runaway convention" question; and "practical recommendations" for the states. ALEC describes itself as a non-profit organization that provides a forum for state legislators and private sector leaders to discuss and exchange information on state policy issues. It focuses on such issues as "free markets, limited government and constitutional division of powers between the federal and state governments."[21] Critics of ALEC and its programs, such as Bob Edgar, president of Common Cause, assert, however, that "its mission is to bring together corporations and state legislators to draft profit-driven, anti-public-interest legislation, and then help those elected officials pass the bills in statehouses from coast to coast."[22]

A further example of increasing interest in the Article V device was offered by a "ConConCon" participant, Harvard Professor Lawrence Lessig, collaborating with campaign management expert Mark McKinnon on "How to Sober Up Washington," a related article that appeared in *The Daily Beast* on April 6, 2012. The authors called for a convention to consider amendments that would eliminate what they describe as corruption in the federal government:

> There is something we can do. We, the People, can take back the power we gave to Congress. We can take it back through the states. The framers left open a path to amendment that doesn't require the approval of Congress: a convention. Article V of the Constitution requires Congress to call a convention to propose amendments if 34 state legislatures demand it.[23]

Moreover, they assert that an Article V Convention would be equally attractive to the political left and right, because, assuming that it would be an open convention,[24] the delegates could consider, and conceivably propose, amendments from the agendas of both ends of the political spectrum:

> The beauty of a convention is that it would provide a forum of possibility for conservative Tea Party types who might want an amendment calling for a balanced budget; or a line-item veto for the president as well as progressives who would like to amend the [C]onstitution to make it possible to enact meaningful campaign finance reform. The only requirement is that two-thirds of the states apply, and then begins the drama of an unscripted national convention to debate questions of fundamental law. It would be a grand circus of democracy at its best.[25]

One notable aspect of these proposals for an Article V Convention appears to be the political diversity of their proponents. As noted previously, "ConConCon" was partially sponsored by organizations that represent divergent parts of the political spectrum, while the conference itself was co-sponsored by Harvard Law School and held on the Harvard campus. These efforts may

[21] For additional information on ALEC, see http://www.alec.org/about-alec/frequently-asked-questions/.

[22] Mike McIntyre, "Conservative Non-Profit Acts as a Stealth Business Lobbyist, *New York Times*, April 21, 2012, available at http://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html?pagewanted=1&_r=1.

[23] Mark McKinnon and Lawrence Lessig, "How to Sober Up Washington," *The Daily Beast*, April 6, 2012, available at http://www.thedailybeast.com/articles/2010/04/06/how-to-tell-dc-politicians-to-go-to-hell.html.

[24] The question of whether an Article V Convention has the authority to propose an amendment or amendments on any issue (open), or is restricted to the single issue for which it is convened (closed) is examined in detail later in this report.

[25] McKinnon and Lessig, "How to Sober Up Washington."

reflect a deliberate choice to target "grass roots" populist and libertarian reformist elements on both the political left and right.

2013-2014: Most Recent Article V Convention Developments

Since the "ConConCon" of 2011, a number of new developments indicate continued growing interest in an Article V Convention, particularly an amendment or amendments requiring a balanced federal budget and/or limits on the federal debt.

Ohio Legislature Applies for an Article V Convention, November 2013

On November 20, 2013, the Ohio legislature approved an application for an Article V Convention to consider an amendment requiring a balanced federal budget except in wartime or instances of declared national emergency.[26] This action came after three decades of comparative inactivity in the states and was the first fresh-start application filed by a state since that of the Missouri legislature in 1982.

Ohio's action brings the number of states that have applied for a convention for this specific purpose to 33, one short of the two-thirds threshold set in the Constitution. Between 1975 and 1983, the legislatures of 32 states submitted applications for an Article V Convention to consider an amendment requiring a balanced federal budget except in times of national emergency.[27] Some observers maintain that state applications remain valid indefinitely, while others claim that state applications expire after some length of time, so that Ohio's application brings the total to 33, one short of the constitutional requirement. Other observers disagree, however, claiming that state applications have only a limited lifespan; by this reasoning, most or all the previous applications have expired and are invalid, so the Ohio application should not be aggregated with the earlier ones, but must be considered as first of a new series.[28]

A further complicating factor centers on state actions rescinding their previous applications for a balanced budget amendment convention. In the years following the convention movement's high water mark in 1982, nine states rescinded their applications for an Article V Convention; subsequently, however, three of the states that rescinded have since filed fresh applications.[29] This issue turns on the question of whether states have the right to rescind their applications for an

[26] S.J. Res. 5, 130th Ohio General Assembly, at http://www.legislature.state.oh.us/res.cfm?ID=130_SJR_5. The resolution also called on Congress to propose a balanced budget amendment to the states, a format previously employed widely in other past state applications.

[27] For additional information consult CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , by Thomas H. Neale, pp. 12-14.

[28] A shelf life of two, four, or seven years has been suggested, but other observers claim that state applications have no expiration date. For additional information on this question, consult CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , by Thomas H. Neale, p. 18.

[29] According to the Friends of the Article V Convention's web site, between 1988 and 2010, Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Montana, New Hampshire, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, and Wyoming rescinded Article V applications. In recent years, however, Alabama, Florida, and New Hampshire have submitted fresh applications for a convention to consider a balanced budget amendment. The author gratefully credits Gregory Watson, Legislative Assistant with the Texas Legislature for his assistance in verifying this list.

Article V Convention. Here again, proponents of the convention device deny their ability to do so, while others argue to the contrary.[30]

Depending on the observer's position on the questions of timeliness and rescission, Ohio could be the 33rd state to apply for an Article V Convention to propose a balanced budget amendment, or it could be the 27th, or the fourth, or conceivably only the first.

"Mount Vernon Conference," December 2013

In a related development, a group of 100 state legislators met on December 7, 2013, at the National Library for the Study of George Washington on the grounds of the Mount Vernon estate in Virginia, to discuss organizing for a projected Article V Convention. It is unclear whether the conference organizers intended a comparison to the Mount Vernon Conference of 1785, a meeting of Maryland and Virginia delegates that was a precursor to the Philadelphia Constitutional Convention.[31]

According to one press account, "The purpose of the meeting is to discuss and draft an agenda for a 'Convention of the States' for the sole purpose of writing the rules that would govern any Article V Conventions for proposing amendments, a so-called constitutional convention."[32] Another report identified Convention of States (COS) as the primary stimulus for the meeting. Convention of States is a project of Citizens for Self Governance, an advocacy group whose self-described goal is "to take power away from big government and the big money that influences it... and return the power to its rightful owners, the people..." and "enable the conservative grassroots to restore our country to a republic with effective self-governance."[33] According to COS, the movement's ultimate objective is to call an Article V Convention that would address a particular subject, rather than a specific amendment, in this case, issues related to "limit[ing] the power and jurisdiction of the federal government." According to their argument, this would then allow a convention to consider amendments in other related issues (e.g., term limits and tax reform).[34]

[30] Dwight Connely, "Amending the Constitution: Is This any Way to Call for a Constitutional Convention?" Arizona Law Review, volume 22, issue 4, 1980, pp. 1033-1034.

[31] The organizers may have intended to draw a connection with the original Mount Vernon Conference of 1785, at which representatives from Maryland and Virginia negotiated an agreement settling outstanding issues concerning fisheries, commerce, and navigation in the Potomac River and Chesapeake Bay. George Washington presided. In addition to negotiating a compact settling these issues, other states were invited to attend a conference on commercial issues at Annapolis the following year. The Annapolis Convention of 1786, attended by representatives of six states, in turn issued the call for the Philadelphia Constitutional Convention of 1787.

[32] Nikki Kelly, "Long Pushes Mount Vernon Assembly," *Journalgazette.net* (Fort Wayne, IN), November 145, 2013, at http://www.journalgazette.net/article/20131114/LOCAL0202/131119679.

[33] Citizens for Self Governance, "About Citizens for Self Governance/Mission" at http://selfgovern.com/about/.

[34] Convention of States, "News," Citizen's Toolkit, Frequently Asked Questions, at http://www.conventionofstates.com/news/looking-back-moving-forward.

Compact for America's Compact for a Balanced Budget Amendment: A "Turn-Key" Plan for an Article V Convention[35]

A different approach to the Article V Convention question was advanced in 2013 by the Compact for America, CFA. The Compact for America is an advocacy group initially launched by the Goldwater Institute,[36] a public policy organization which identifies its focus as research oriented to individual rights, the free market economy, and limited constitutional government;[37] CFA currently identifies itself as a domestic non-profit "501(c)4" corporation registered in Texas.[38] The organization's program is comprised of the Compact for a Balanced Budget Amendment ("the Compact"), a proposed interstate compact, which, in the institute's words, would transform "the otherwise cumbersome state-initiated amendment process under Article V into a 'turn-key' operation."[39] The Compact includes a comprehensive program that, in the opinion of its advocates, meets all the requirements necessary to

- apply for and convene a convention;
- provide rules and operating procedures for the convention;
- convene the convention;
- present, approve, and propose a pre-drafted amendment for transmission to the states; and
- provide for prospective state ratification of the amendment.

The single action of the requisite number of states in agreeing to the Compact would, its proponents argue, set in motion the convention process and carry it through to successful ratification and incorporation as part of the Constitution. Proponents of the Compact maintain that the interstate compact device would speed up the Article V Convention process, so that a convention could be called, convened, and adjourned and an amendment proposed and ratified within 12 months.[40]

The Compact seeks to anticipate and prescribe procedures for various elements in the Article V Convention process. States that agree to the Compact would simultaneously agree to its various requirements. A state's act of agreement to the Compact would constitute its application for an Article V Convention, the sole purpose of which would be to propose an amendment whose text is prescribed in the Compact. Participating states also agree to observe the Compact's provisions governing the convention's composition and rules of procedure. Finally, by agreeing to the

[35] The author extends grateful thanks and credit to CRS Legislative Attorney Kathleen S. Swendiman, kswendiman@crs.loc.gov, 7-9105, who prepared much of the section dealing with interstate compacts.

[36] The institute is named for the late Barry M. Goldwater, Arizona Senator from 1953-1965 and 1968-1987, and Republican nominee for President in 1964.

[37] "Liberty and Justice for All," Goldwater Institute, at http://goldwaterinstitute.org/institute.

[38] CompactforAmerica.org, "About," at http://www.compactforamerica.org/about-2/.

[39] The Compact for America was endorsed by the American Legislative Exchange Council's Board of Directors on January 28, 2013. See http://www.alec.org/model-legislation/resolution-to-effectuate-the-compact-for-america/.

[40] Goldwater Institute, Compact for America, Statement of Nick Dranias, November 20, 2013, at http://goldwaterinstitute.org/article/compact-america.

Compact, states also commit themselves to "prospective" ratification of the proposed amendment.[41]

The keystone element of the Compact is the "Balanced Budget Amendment" that would be proposed by the convention. Among its major elements, the amendment would

- provide for a balanced federal budget at all times, unless any deficit is financed by debt issued in conformity with the amendment's requirements;
- set a ceiling for federal debt equal to 105% of the outstanding debt at the time the amendment takes effect;
- require that any increase in the federal debt ceiling proposed by Congress must be submitted to the states and approved by a simple majority (26, assuming the District of Columbia and the territories are excluded) of state legislatures within 60 days before taking effect;
- require the President to ensure that the debt ceiling is not exceeded by proposing the impoundment of specific expenditures sufficient to prevent the breach. The President's impoundments would become effective in 30 days unless Congress proposed alternatives of the same or greater amount;
- specify that the President's failure to designate or enforce such impoundments would be an impeachable misdemeanor; and
- require that any new or increased tax revenue tax legislation be approved by two-thirds of the full membership of the Senate and House of Representatives on a roll call vote.

The Compact includes other noteworthy provisions. It would establish an ongoing Compact Commission which would promote the convention, encourage states to join, and "coordinate the performance of obligations (presumably of signatory states) under the Compact," among other things. It would set the size of convention delegations as one delegate per member state, and specifies that the governor of each member state would serve as the state's delegate, contingent on the governor's taking a leave of absence from state duties. The convention would last one day, and its sole duty would be to introduce, debate, vote upon, and reject or propose for ratification the specific text of the Balanced Budget Amendment described above.[42]

As part of the compact initiative, the CFA has also drafted model legislation for a concurrent resolution that could be used by Congress to call the convention. Title I of the model resolution also includes the text of the proposed amendment and would establish procedures governing the form of the convention, delegate appointment, convention rules of procedure, and provisions governing congressional referral of the proposed amendment to the states. Title II of the resolution would refer the Balanced Budget Amendment proposed by the convention to the state legislatures for ratification.[43]

[41] Ibid., "Compact for State Legislators," at http://goldwaterinstitute.org/article/compact-america.

[42] Goldwater Institute Web Site, "Compact for a Balanced Budget," at http://goldwaterinstitute.org/sites/default/files/CFA-Text-Compact%20for%20a%20Balanced%20Budget%20Final%20%282%29.pdf.

[43] Goldwater Institute Web Site, "Omnibus Concurrent Resolution," at http://www.compactforamerica.org/wp-content/uploads/CFA-Text-Congressional-Omnibus-Resolution.pdf.

Compact for a Balanced Budget Amendment: An Interstate Compact under the Constitution

The Compact for a Balanced Budget Amendment is self-identified as an interstate compact. As such, it falls under the authority of Article I, Section 10, clause 3 of the Constitution, which states that, "No State shall, without the Consent of the Congress ... enter into any Agreement or compact with another State...." This provision is known as the "Compact Clause," and it is the only section of the United States Constitution that deals with formal agreements between and among the states. The Compact Clause reflects the view of the Framers that states should be able to work cooperatively together, as well as the concern that unchecked interstate alliances might threaten the harmony of the Union or the authority vested by the Constitution in the federal government.[44] The compact clause was originally included in the Constitution primarily to govern boundary agreements between states, but it has subsequently evolved "as an instrument for state cooperation in carrying out affirmative programs for common problems."[45]

The Constitution places no limits on what might be done through an interstate compact other than the requirement of congressional consent. In the early years of government under the Constitution, they were used almost exclusively to settle boundary disputes. Beginning with the establishment of the Port of New York Authority[46] in 1921, however, compacts began to be used to address more complex, regional issues requiring intergovernmental cooperation. Some compacts are merely advisory in form, but others may be regulatory, with significant powers granted to multi-state commissions.[47] More recently, compacts have addressed such wide-ranging concerns as mental health treatment, law enforcement and crime control, education, driver licensing and enforcement, environmental conservation, energy, nuclear waste control, facilities operations, transportation, economic development, insurance regulation, placement of children and juveniles, disaster assistance, and pollution control. There are approximately 200 interstate compacts in effect today.[48]

Even though the Compact Clause specifically provides for congressional consent, the United States Supreme Court declined, in 1893, in *Virginia v. Tennessee,*[49] to read the consent requirement literally, so as to apply to each and every agreement between states. "There are many matters upon which different States may agree that can in no respect concern the United States," such as joint actions between states to fight disease.[50] Thus the Court held that the Framers

---

[44] Michael L. Buenger and Richard L. Masters, "The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems," *Roger Williams Law Review*, v. 9, issue 1, fall 2003, pp.71, 85.

[45] U.S. Constitution Annotated, Article I, Section 10, clause 3 at http://www.crs.gov/conan/default.aspx?mode=topic&doc=Article01.xml&t=3|2&s=10&c=3.

[46] 1921 N.Y. Laws Ch. 154; N.J. Laws Ch. 151; 42 Stat 174 (1921).

[47] Administrators under compacts with congressional compacts with congressional consent may have the power to promulgate rules and regulations, and may also review federal agency action under certain circumstances. See *Seattle Master Builders Assn. v. Pacific Northwest Elec. Power*, 786 F.2d 1359, 1362 (9th Cir. 1986).

[48] The Council of State Governments, National Center for Interstate Compacts (NCIC), at http://www.csg.org/programs/ncic/default.aspx. The NCIC website includes a database of current interstate compacts searchable by state, name of compact, and subject.

[49] 148 U.S. 503 (1893). It may also be noted that this case involved a boundary agreement between Virginia and Tennessee early in the 19th century that had never obtained formal congressional consent. The court held that, over the years, Congress had relied upon the terms of the compact for judicial and revenue purposes and thus had impliedly consented to the interstate compact.

[50] Ibid., 518. For an analysis of whether congressional consent may or may not be required for the proposed National (continued...)

intended this requirement to apply only to compacts "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States."[51] States may enter into agreements among themselves, and congressional consent will not be required, so long as the agreements do not infringe on federal interests or shift the balance of power within the federal system of government.[52] It should, however, be noted that the consent power of Congress is absolute. Congress can require consent to any interstate compact, and can deny consent to any interstate compact if it so chooses.[53]

Usually congressional consent to an interstate compact takes the form of a joint resolution or act of Congress specifying its approval of the text of the compact, adding any conditions or provisions it deems necessary, and often embodying the compact document. As with any congressional enactment, it must be signed by the President before it becomes law.[54] Very rarely has the President vetoed or threatened to veto consent legislation by Congress.[55] While congressional consent to an interstate compact is most often explicit, consent by Congress may also be implied by subsequent acts of Congress: "An inference clear and satisfactory that Congress ... intended to consent" to a compact may be sufficient.[56] Congress may also delegate its power to approve a compact to a federal official so long as an "intelligible principle" against which approval can be measured is apparent.[57]

In addition, Congress can condition its consent to require that the proposed interstate compact be changed to meet congressional criteria, or contain specific provisions.[58] The Supreme Court, in

---

(...continued)

Popular Vote Compact, see Heather Green, "The National Popular Vote Compact: Horizontal Federalism and the Proper Role of Congress Under the Compact Clause," *Chapman Law Review*, vol. 16, spring 2012, p.16.

[51] Ibid., 519.

[52] See *Cuyler v. Adams*, 449 U.S. 433, 440 (1981), where the Court stated that if an agreement is not "directed to the formation of any combination tending to increase the political power of the States, which may encroach upon or interfere with the just supremacy of the United States," it does not require congressional consent to be valid.

[53] This may be true even where affirmative consent is not necessary. *St. Louis & San Francisco Ry. Co. v. James*, 161 U.S. 545 (1896); *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959). See also *Cuyler v. Adams*, 449 U.S. 433 (1981), where the Court deferred to Congress's political judgment that the Interstate Agreement on Detainers was to be treated as a compact pursuant to the Compact Clause even if the Constitution did not require such treatment. Justice White noted that the "requirement that Congress approve a compact is to obtain its political judgment." *Cuyler*, at 441, n. 8 (White, J., joined by Blackmun, J., dissenting).

[54] See *Metropolitan Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise*, 501 U.S. 252, 276 & n.21 (1991). "If the power is legislative, Congress must exercise it in conformity with the bicameralism and presentment requirements of Art. I, § 7." See, also, footnote 21 of that decision, wherein Justice Stevens, concurring in the judgment, cites several provisions in the Constitution which permit Congress or a part of Congress to take some actions without complying with the bicameral and presentment requirements of Art. I, § 7. While the Justice's list may not be all inclusive, it is noted that the Compact Clause is not included.

[55] In 1942, President Roosevelt vetoed the Republican River Compact, stating that it "seeks to withdraw the jurisdiction of the United States over the waters of the Republican Basin for purposes of navigation." *Congressional Record*, v. 87, pt. 3, April 2, 1941, pp. 3285-86. He did, however, sign a later, modified version of the compact. See 57 Stat. 86. Joseph F. Zimmerman, *Interstate Cooperation: Compacts & Administrative Agreements*, 2nd ed. (Albany, NY: State University of New York Press, 2012), p. 56.

[56] *Virginia v. West Virginia*, 78 U.S. 39, 60 (1870). Congressional consent "is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing them . . ." *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893).

[57] *Milk Indus. Found. v. Glickman*, 132 F.3d 1467, 1471 (D.C. Cir. 1998).

[58] Chief Justice Charles Evans Hughes wrote in *James v. Dravo Contracting Company*, 302 U.S. 134, 138 (1937): "It (continued...)

Cuyler v. Adams, stated that, "(b)y vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority."[59]

The Interstate Compact for a Balance Budget Amendment would require congressional approval under the Compact Clause because it proposes actions that would redefine, via a constitutional amendment, Congress's taxing and spending authority, arguably shifting the balance of power within the federal system of government. CFA's available promotional literature does not appear to acknowledge explicitly the need for congressional approval, but Nick Dranias, the Goldwater Institute's Constitutional Policy Director, and perhaps the best-known advocate of the Compact for America and its Compact for a Balanced Budget Amendment, has suggested as much. In one account he writes, "[t]he agreement (Compact for America) is designed to be 'blessed' by a counterpart congressional resolution, *which consents to the compact* (emphasis added) and completely fulfills Congress' role in the state-initiated Article V process—from the call for the convention, to the ultimate ratification referral of the proposed amendment."[60] In one of its supporting documents, CFA makes another indirect reference to the congressional approval requirement:

> Moreover, because no member state may attend the convention until Congress adopts the counterpart omnibus concurrent resolution, which calls the convention in accordance with the CFA, the CFA's safeguards will also have the status of the "Law of the United States" under current precedent interpreting the effect of Congressional approval of interstate compacts.[61]

If the Interstate Compact for a Balanced Budget Amendment were to be approved by Congress via a concurrent resolution without presentment to the President, it would likely be challenged as unconstitutional. As noted above, congressional approval of interstate compacts, along with any conditions attached to such approval, generally takes the form of a legislative bill, usually a joint resolution, which becomes law when signed by the President. A concurrent resolution which does not include presentment may be found by the courts to fall short of the requirement of congressional approval under the Compact Clause.[62]

Reaction to the Compact for a Balanced Budget

In its early announcements, Compact for America, the Compact's sponsoring organization, initially suggested that quick approval by the 38 state legislatures required by the plan could lead to a convention and subsequent ratification of the amendment as early as July 4, 2013, due to the

(...continued)

can hardly be doubted that in giving consent Congress may impose conditions."

[59] *Cuyler v. Adams*, 449 U.S. 433, 439-440 (1981).

[60] *Constitution Daily*, "Fulfilling the Promise of Article V with an Interstate Compact," December 6, 2013, at http://blog.constitutioncenter.org/2013/12/fulfilling-the-promise-of-article-v-with-an-interstate-compact/.

[61] Nick Dranias, "Legal Brief: The Compact for America's Laser-Focused Article V Convention is Clearly Constitutional," Compact for America, February 22, 2013, at http://www.compactforamerica.org/legal-brief-the-compact-for-americas-laser-focused-article-v-convention-is-clearly-constitutional/.

[62] *Metropolitan Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise*, 501 U.S. 252, 276 (1991). See also Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

"prospective" ratification process embedded in the compact. The only identifiable state legislative action to date, however, appears to have been by the Rules Committee of the Arizona House of Representatives, which rejected a bill incorporating the Compact in February 2013.[63]

Although the Compact does not appear to have generated widespread coverage in major national newspapers, broadcast or cable media, or in academic journals, it has attracted considerable reaction, largely posted on the Internet.

Among its supporters, as noted earlier, is the Goldwater Institute, which sponsored CFA, the organization that developed the Compact. In addition, the Board of Directors of the American Legislative Exchange Council, ALEC, approved a resolution offering the Compact as model legislation in January 2013.[64] Cato Institute[65] senior fellow in constitutional studies Ilya Shapiro also declared his support in a Cato blog posting in which the author asserted that "the Compact for America would powerfully check and balance Washington's debt addicts."[66] In its literature, Compact for America also lists a number of Members of Congress and other public figures who support the Compact for a Balanced Budget Amendment.[67]

Other organizations have criticized the Compact, however. The conservative John Birch Society, which opposes an Article V Convention on the grounds that a runaway convention could damage the Constitution, also opposes the Compact for a Balanced Budget Amendment on the same grounds. In addition, the society's journal, *The New American*, asserted the CFA's balanced budget amendment would "grant the President new, sweeping authority over the budget-making process. Furthermore, giving the President the right to 'designate' any spending request is tantamount to giving him the power to rewrite laws passed by Congress, which would amount to rewriting both Articles I and II of the Constitution."[68] Bill Walker, co-founder of Friends of the Article V Convention, and one of the earliest contemporary supporters of the convention concept, strongly opposed CFA on several grounds in a monograph posted on the FOAVC website. He claimed that CFA would be an improper use of the interstate compact device, since it seeks effectively to circumvent the amendment process as established in Article V and would adversely impact the balance of power among the various branches built into the Constitution. He further criticized the proposal on the grounds that by reducing the convention to a "turn-key" process, it would reduce what the founders envisioned as a deliberative effort to a clockwork series of events with pre-ordained outcomes. In his critique, he asserted that the Compact would ignore the founders' vision of the Article V Convention as a deliberative assembly, that debate and amendment in the convention would be prohibited, that Congress would be deprived of any

[63] "Compact for America Dies, Legality Questioned," *Arizona Daily Independent*, February 20, 2013, at http://www.arizonadailyindependent.com/2013/02/20/compact-for-america-dies-legality-questioned/.

[64] http://www.alec.org/model-legislation/resolution-to-effectuate-the-compact-for-america/.

[65] The Cato Institute, based in Washington, describes itself as a "public policy research organization—a think tank—dedicated to the principles of individual liberty, limited government, free markets and peace." See http://www.cato.org/about.

[66] Ilya Shapiro, "A Compact for America to Reign in Government," Cato Institute, *At Liberty*, January 4, 2103, at http://www.cato.org/blog/compact-america-rein-government.

[67] "Compact for America's 'Article V 2.0' Turn-Key Approach is Our Best Shot," Compact for America website, at http://goldwaterinstitute.org/sites/default/files/CFA-Fact%20Sheet%20Turn%20Key%20Article%20V%20Approach%20to%20Reforming%20Washington.pdf.

[68] Joe Wolverton, II, "How the Compact for America Threatens the Constitution," *The New American*, January 10, 2013, at http://www.thenewamerican.com/usnews/constitution/item/14109-how-the-compact-for-america-threatens-the-constitution.

discretion with respect to proposing the amendment, and the states would be locked in to a prospective ratification without the chance for debate or reconsideration.[69]

From the standpoint of Congress and its role in the Article V Convention process, the Compact presents certain issues for consideration. First, its literature appears to presume congressional approval of the interstate compact providing for a Balanced Budget Amendment via a concurrent resolution. As noted previously, however, a concurrent resolution which does not include presentment to the President may be found by the courts to fall short of the congressional approval requirement of Article I, Section 10, clause 1 of the Constitution. Second, by approving the resolution, Congress would presumably agree to its "turn-key" design, effectively waiving any claim to further authority for setting the convention's mandate, form, or procedures; determining whether the amendment should be proposed to the states; and selecting the ratification process, that is, whether by the state legislatures or ad hoc convention, as explicitly provided in Article V. The role and responsibilities of Congress in the Article V Convention process are examined at greater length in the next section of this report.

The Role of Congress in the Article V Convention Process

The state legislatures are indispensable actors in the process of proposing an Article V Convention—nothing can happen unless 34 or more apply, but Congress is equally indispensable in the process of summoning, convening, and by its own assertion, defining, one. The Constitution, with characteristic economy of phrase, simply directs that "Congress ... on the application of the Legislatures of two thirds of the several States, shall call a Convention for the proposing of Amendments...." Beyond the language of Article V, however, observers have identified subsidiary issues for consideration by Congress, of which three may arguably be most important:

- Is Congress obligated to call an Article V Convention on the receipt of sufficient state applications?
- What sort of convention does Article V authorize?
- If an Article V Convention proposes amendments, does Congress have any discretion as to whether they must be submitted to the states for consideration?

Is Congress Required to Call a Convention?

The language of the Constitution is notably straightforward on Congress's duty to call an Article V Convention: "... on the Application of the Legislatures of two thirds of the several States, [Congress] *shall* call a Convention for proposing Amendments.... (emphasis added)" The founders' intentions seem unmistakable, and no less an authority than Alexander Hamilton wrote emphatically that, once the two-thirds threshold is met, "the Congress will be obliged ... to call a convention for proposing amendments.... The words of this article are peremptory. The Congress

[69] Bill Walker, "The Diabolical Plot of 'Compact for America' A Blueprint for Disaster," undated, FOAVC website at http://www.foavc.org/reference/file48.pdf.

'shall call a convention.' *Nothing in this particular is left to the discretion of that body* (emphasis added). And of consequence, all the declamation of disinclination to a change vanishes in air."[70] One scholar, Russell L. Caplan, noted that, "[t]he founding generation spoke with one voice on this duty," going on to quote the writings of John Marshall, James Iredell, John Dickinson, and James Madison in which they all asserted the obligation of Congress to call a convention once the two-thirds threshold has been passed.[71]

Given the founders' stern injunctions, on what grounds could Congress decline to call a convention? Several factors concerning state applications might be used to represent state applications as defective, and therefore not valid. For instance, most constitutional scholars hold that applications proposing a specifically worded amendment are invalid. As one observer noted, "these resolutions seek to make the 'Convention' part of the *ratifying* (emphasis in the original) process, rather than part of the deliberative process for "proposing" constitutional amendments.... they are applications for a convention empowered solely to approve or disapprove the submission to the states of particular amendments 'proposed' elsewhere."[72] Another reason for hesitation in calling an Article V Convention centers on the great issue of its scope — general versus limited. A further potential impediment is lack of contemporaneity, in other words, an application or applications have expired and no longer have any force. It should be noted, however, that the advocacy group, Friends of the Article V Convention, holds that state applications never expire.[73] Similarly, a 2010 study by the Goldwater Institute on the Article V Convention asserts that Congress's role in the convention process is purely ministerial, or clerical:

> Congress acts primarily as the legislatures' agent. From the nature of that role it follows that Congress may not impose rules of its own on the states or on the convention. For example, it may not limit the period within which states must apply. Time limits are for principals, not agents to impose: if a state legislature believes its application to be stale, that legislature may rescind it.[74]

Cyril Brickfield, reporting to the House Judiciary Committee in 1957, suggested that Congress was, arguably, *not* required to summon an Article V Convention on the presentation of the requisite number of state applications: "[i]t is doubtful, however, that there is any process or machinery by which the [C]ongress could be *compelled* (emphasis added) to perform this duty."[75] In support of this assertion, he cited as precedent the failure of Congress in 1920 to carry out its constitutionally mandated duty to reapportion the House of Representatives.[76] Congress, he noted,

---

[70] Alexander Hamilton, in *The Federalist*, Number 85, "Conclusion," (Cambridge, MA: the Belknap Press of Harvard University Press, 1961), p. 546.

[71] Russell L. Caplan, *Constitutional Brinksmanship, Amending the Constitution by National Convention* (New York: Oxford University Press, 1988) pp. 115-117.

[72] Arthur Earl Bonfield, "Proposing Constitutional Amendments by Convention: Some Problems," *Notre Dame Law Review*, volume, 39, 1963-1964, pp.662-663.

[73] Friends of the Article V Convention, "What Does Contemporaneous Mean as It Relates to Counting Applications," available at http://www.foavc.org/mod/resource/view.php?id=2.

[74] Robert G. Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute, Policy Report Number 241, September 16, 2010. p. 21. The Goldwater Institute is a public policy research institute, the self-identified focus of which is policy research oriented to individual rights, the free market economy and limited constitutional government.

[75] U.S Congress, House of Representatives, Committee on the Judiciary, *Problems Relating to a Federal Constitutional Convention*, by Cyril F. Brickfield, 85th Congress, 1st sess., Committee Print (Washington: GPO, 1957), p. 27.

[76] See U.S. Constitution, Article I, Section 2, clause 3, and Amendment 14, Section 2.

had the mandate to perform, but "its failure of refusal to do so apparently gives rise to no enforcible (sic) cause of action."[77]

Still another option potentially available is preemption of the call for a convention. Supporters of this tactic maintain that Congress can legally respond to the applications of the states by proposing its own relevant amendment. During the 1980s campaign for a balanced budget amendment convention, the National Taxpayers' Union asserted that the call for a convention was, "just a way of getting attention — something akin to batting a mule with a board."[78] In defense of this argument, the House Judiciary Committee's 1993 print, *Is There a Constitutional Convention in America's Future?*, noted that during the 1980s, a number of states had forwarded conditional applications that specifically stated their applications would be canceled in the event Congress proposed a balanced budget amendment incorporating the general principles included therein.[79]

Ultimately, it is difficult to conceive that Congress would fail to heed the deliberate call of a substantial majority of the nation's citizens, acting through the agency of their state legislatures, and meeting the clearly stated requirements of Article V. As Cyril Brickfield noted, in the final analysis, "[p]ublic opinion and, ultimately, the ballot box are the only realistic means by which the Congress can be persuaded to act."[80] The House Judiciary Committee speculated that congressional failure to call a convention might trigger court challenges that could lead to a constitutional crisis,[81] but another legal scholar wrote that, "[e]ven conceding the reach of the judicial power as exercised these days, I find it difficult to believe that the Supreme Court would issue an order compelling Congress to carry out a duty which can hardly be called a simple ministerial duty, or would, in the alternative, take it upon itself to prescribe the procedures for a convention. I much prefer to rely on the integrity of Congress in carrying out a constitutional duty."[82]

What Sort of Convention Does Article V Authorize?

One of the weightiest issues Congress would face when considering an Article V Convention turns on the question of what sort of convention is contemplated by the Constitution. What did the founders envision when they drafted this clause of the Constitution? Commentators have generally suggested three alternative models for the Article V Convention: the general convention; the limited convention; and the runaway convention, actually a subset of the limited convention. A general convention would be free to consider any and all additions to the Constitution, as well as alterations to existing constitutional provisions. A limited convention would be restricted in its "call" or authorizing legislation to consideration of a single issue, or group of issues, as specified by the states in their applications. The third model is a much-cited subset of the limited convention, the runaway convention, an assembly that departs from its

[77] Brickfield, *Problems Relating to a Federal Constitutional Convention*, p. 27.

[78] *Baltimore Evening Sun*, March 11, 1983; quoted in *Is There a Constitutional Convention in America's Future?*, p. 13.

[79] Ibid. For additional information on conditional state applications, see CRS Report R2592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*, by Thomas H. Neale, pp. 17-18.

[80] Brickfield, *Problems Relating to a Federal Constitutional Convention*, p. 28.

[81] *Is There a Constitutional Convention in America's Future?*, p. 14.

[82] Paul G Kaupfer, "The Alternative Amendment Process: Some Observations," *Michigan Law Review*, volume 66, issue 5, March 1967-1968 (sic), pp. 905-906.

mandate to address a wide range of issues that had supposedly been beyond its purview. Each of these alternative models has had its proponents and detractors over the years.

The General Convention

Supporters of a general convention note that the language of Article V is broadly inclusive: "... on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing *Amendments* (emphasis added)...." They assert that the article places no limitation on the number or scope of amendments that would be within a convention's purview. Constitutional scholar Charles Black offered emphatic support of this viewpoint: "I believe that, in Article V, the words 'a Convention for proposing such amendments' mean 'a convention for proposing such amendments as that convention decides to propose.'"[83] In fact, he went on to assert that limited conventions would be constitutionally impermissible for the reason that no language is found in Article V that authorizes them:

> It (Article V) does *not* (emphasis in the original) imply that a convention summoned for the purpose of dealing with electoral malapportionment[84] may kick over the traces and emit proposals dealing with other subjects. It implies something much more fundamental than that; it implies that Congress cannot be obligated, no matter how many States ask for it, to summon a convention for the limited purposed of dealing with electoral apportionment alone, and that such a convention would have no constitutional standing at all.[85]

Consequently, by this reasoning, the many hundreds of state applications for a convention to consider amendments on a particular subject are null and void. Moreover, Professor Black noted that state applications demanding a convention on a single issue were almost unknown in the 19th century; he described the phenomenon as " ... a child of the *twentieth century* (emphasis in the original).... The twentieth century petitions, embodying this theory, are on the point of law implicitly resolved by them, nothing but self-serving declarations, assertions of their own power by the state legislatures."[86]

Writing at the height of debate over the 1980s campaign for an Article V Convention to consider a balanced budget amendment, former Solicitor General Walter Dellinger asserted that the Framers deliberately sought to provide a means of amending the Constitution that is insulated from excessive influence by either the state legislatures, or by Congress.[87] His view of the convention's authority is among the most expansive advanced by commentators on the Article V Convention:

---

[83] Charles Black, "Amending the Constitution: A Letter to a Congressman," *Yale Law Journal*, volume 82, number 2, December 1972, p. 199.

[84] Professor Black was writing in the context of the Article V Convention campaign to overturn the Supreme Court decision in *Reynolds v. Simms*, 377 U.S. 553 (1964) and *Wesberry V. Sanders*, 376 U.S. 1 (1964), which extended the "one-person, one vote" requirement respectively to state legislative districts and congressional districts, ruling that the population of both jurisdictions must be substantively equal.

[85] Black, "Amending the Constitution: A Letter to a Congressman," p. 199.

[86] Ibid., p. 203.

[87] See Walter E. Dellinger, "The Recurring Question of the 'Limited' Constitutional Convention," *Yale Law Journal*, volume 88, issue 8, July 1979, pp. 1623-1640.

> ... any new constitutional convention must have the authority to study, debate, and submit to the states for ratification *whatever amendments it considers appropriate* (emphasis added).[88]

According to his judgment, an Article V Convention must be free to pursue any issue it pleases, notwithstanding the limitations included in either state applications or the congressional summons by which it was called:

> If the legislatures of thirty-four states request Congress to call a general constitutional convention, Congress has a constitutional duty to summon such a convention. If those thirty-four states recommend in their applications that the convention consider only a particular subject, Congress still must call a convention and leave to the convention the ultimate determination of the agenda and the nature of the amendments it may choose to propose.[89]

More recently, Michael Stokes Paulsen invoked original intent and the founders' understanding of such a gathering. Asserting that they would have considered a "convention" to be a body that enjoyed broad powers, similar to the Constitutional Convention itself, he suggests:

> "Convention" had a familiar ... public meaning in 1787. It referred to a deliberative political body representing the people, as it were, "out of doors." Representatives or delegates to such a convention might well operate to some extent pursuant to "instructions" of the people thus represented, but a convention was not a pass-through or a cipher, but rather an agency — a deliberative political body."[90]

Perhaps the most assertive expression of the open or general convention argument centers on the doctrine of "conventional sovereignty:"

> According to this theory, a convention is, in effect, a premier assembly of the people, a representative body charged by the people with the duty of framing the basic law of the land, for which purpose there devolves upon it all the power which the people themselves possess. In short, that for the particular business of amending and revising our Constitution, the convention is possessed of sovereign powers and therefore is supreme to all other Government branches or agencies."[91]

Another school of thought, cited by the House Judiciary Committee in a 1957 study, rejects the conventional sovereignty argument, primarily on the grounds that an Article V Convention can only be summoned subject to the conditions of the Constitution:

> ... those who assert the right of the Congress to bind a convention contend that the convention is, in no proper sense of the term, a sovereign. It is, they argue, but an agency employed by the people to institute or revise fundamental law. While there may be a special dignity attaching to a convention by reason of its framing fundamental law, no such dignity or power should attach which would invest it with a primacy over other branches of government having equally responsible functions.[92]

---

[88] Ibid., p. 1624.

[89] Ibid., p. 1640.

[90] Michael Stokes Paulsen, "How to Count to Thirty-Four: The Constitutional Case for a Constitutional Convention," *Harvard Journal of Law and Public Policy*, volume 34, issue 3, 2011, p. 842.

[91] Brickfield, *Problems Relating to a Federal Constitutional Convention*, 16.

[92] Ibid.

Writing in *Constitutional Brinksmanship*, Russell Caplan further noted the example that contemporary state conventions called to propose constitutional amendments tended to exceed their mandates unless they had been strictly limited:

> The trend toward aggrandizement of power at a convention is supported by modern experience in the states. When delegates are presented with the choice of writing a new constitution or submitting a number of amendments to the existing document, they have exhibited a desire to become part of history by framing a new constitution.[93]

Defenders of the general convention counter opponents by asserting that the founders included ample checks on the work of a general or unlimited convention: first, any proposed amendment or amendments would face the same requirement of approval by three-fourths of the states, and second, Congress is empowered to choose whether such amendments will be considered by the state legislatures or special-purpose ratification conventions. In the final analysis, they assert, "a convention can only *propose* (emphasis in the original) amendments, not ratify them."[94] An additional check not cited in the Constitution centers on the question of whether Congress is required to propose to the states any or all amendments offered by an Article V Convention. This issue is examined at greater length later in this report.

The Limited Convention

While the concept of the general convention enjoys considerable support, there are those who maintain opposing views. A broad range of constitutional scholars holds that a convention may, in fact, be limited to a specific area or areas contained in state applications, or indeed, that it *must* be so limited. A fundamental assumption of this viewpoint is that the Framers did not contemplate a wholesale or large-scale revision of the Constitution when they drafted Article V. Senator Sam Ervin, a champion of advance congressional planning for a convention, wrote that, "... there is strong evidence that what the members of the convention were concerned with ... was the power to make specific amendments.... [The] [p]rovision in article V for two exceptions to the amendment power[95] underlines the notion that the convention anticipated a specific amendment or amendments rather than general revision."[96]

One commentator, championing the states' authority in this question, noted that the founders' intention in establishing the state petition device was to provide a check against a Congress that had declined to propose an amendment or amendments that commanded widespread support, suggesting that a convention limited by the subject area of state applications was constitutional, but that a convention could not be limited by Congress:

---

[93] Caplan, *Constitutional Brinksmanship, Amending the constitution by National Convention*, p. 147.

[94] Michael A. Almond, "Amendment by Convention: Our Next Constitutional Crisis?" *North Carolina Law Review*, volume. 53, issue 3, February 1975, p. 507.

[95] These were the prohibitions against amendments restricting the slave trade before 1808, imposing a capitation tax outside the census formula previously agreed to, or depriving states of equal suffrage in the Senate.

[96] Sam J. Ervin, Jr., "Proposed Legislation to Implement the Convention Method of Amending the Constitution," *Michigan Law Review*, volume 66, issue 5, March, 1967-1968 (sic), p. 882.

> ... Congress may not impose its will on the convention.... the purpose of the Convention Clause is to allow the States to circumvent a recalcitrant Congress. The convention Clause, therefore, must allow the States to limit a convention in order to accomplish this purpose.[97]

According to this view, the states should decide whether a convention would be open and general, or limited, depending on the actions of the several legislatures.

Congress, however, has historically sought to provide for limited conventions when it has considered this question. Once valid applications have been received from 34 states, it has maintained, the call for an Article V Convention must come from Congress, and Congress has the authority to limit the subject of amendments to be considered. It is at this step that Congress has asserted in the past, but not provided in legislation, its power to set limits as to the convention's agenda. This suggests a delicate balance of authority: the states are authorized to apply for a limited convention, but only Congress can guarantee, by law, that a convention so summoned will confine its recommendations to the issues within its mandate. For instance, the Senate Judiciary Committee in 1984 claimed for Congress the power both to set and enforce limits on the subject or subjects considered by a convention summoned in response to state petitions that specified the consideration of amendments in particular areas. This was stated in the committee's report on S. 119 in the 98th Congress, the "Constitutional Convention Implementation Act of 1984":

> Under this legislation, it is the States themselves, operating through the Congress, which are ultimately responsible for imposing subject-matter limitations upon the Article V Convention.... the States are authorized to apply for a convention "for the purpose of proposing one or more specific amendments." Indeed, that is the only kind of convention within the scope of the present legislation, although there is no intention to preclude a call for a "general" or "unlimited" convention.[98]

The Goldwater Institute's 2010 study[99] reached similar conclusions. Examining the contemporary record at the time of the Constitutional Convention, the author asserted the founders anticipated that the Article V Convention would serve chiefly as an agent of the states. Consequently, the states could set the convention's agenda by specifying the questions it would address, and that the convention would be bound to respect the limits of its mandate.[100] Congress, in this viewpoint, acts to facilitate the will of the people acting through their state legislatures: if they call for a convention to consider one or more specific policy proposals, then Congress should call for an appropriately limited convention. If, however, the states petition for a general convention,[101] then the argument can also be made in favor of the broader-based assembly.

Assuming that Congress does possess a constitutional mandate to limit the issue or issues a convention might consider, what sort of instruction would be appropriate to this task? Past legislative proposals offer a view of the most widely favored mechanism. First, Section 6(a) of S.

---

[97] James Kenneth Rogers, "The Other Way to Amend the Constitution: The Article V Amendment Process," *Harvard Journal of Law and Public Policy*, volume 30, issue 3, summer 2007, p. 1018.

[98] *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess., S.Rept. 98-594, p. 25.

[99] Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute, Policy Report Number 241, September 16, 2010.

[100] Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, pp. 15-18. Available online at http://www.goldwaterinstitute.org/article/5005 .

[101] Presumably, language that asked only for a "Convention for Proposing Amendments," would be interpreted as calling for a general convention.

119 (98th Congress), cited earlier, required the concurrent resolution summoning an Article V Convention to "set forth the nature of the amendment or amendments for the consideration of which the convention is called." Section 10(b) further required that

> No convention called under this Act may propose any amendment or amendments of a nature different from that stated in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined solely by the Congress of the United States and its decisions shall be binding on all others, including State and Federal courts.[102]

Alternatively, a number of scholars suggest that while state applications are not prescriptive with respect to the issue areas a convention may address, state intentions must be given "great weight" by Congress when it calls a convention under Article V procedures. William Van Alstyne, writing in the Duke Law Journal in 1978 went so far as to assert that,

> ... [i]f two thirds of the state legislatures ... agree on the exact wording of an amendment ... this would seem to me to state the paradigm case in which Congress should proceed with the call — and limit the agenda exactly in accordance with the unequivocal expressions of those solely responsible for the event.[103]

The Runaway Convention

Fear of a runaway Article V Convention has been a recurring theme over many decades. What, in fact, is a "runaway convention?" It is generally defined as one that was summoned to consider a limited agenda, but moved beyond its original mandate to consider policy questions and potential amendments not contemplated in the applications of the state legislatures or in the congressional summons. In 1967 hearings held on the convention issue, Theodore Sorenson, one of President John Kennedy's principal domestic policy counselors, cautioned that, "[n]o matter how many and how sincere are the assurances from the backers of a new Convention that their sole concern is reapportionment, no one can safely assume that delegates to such a Convention, once safely seated and in action, would wish to go home without trying their hand at improving many parts of this delicately balanced document."[104] It is, as another scholar noted, the subject of "age old fear."[105] "Opponents suggest that a runaway convention, driven by 'political fringe groups' might revisit a wide range of constitutional provisions."[106] Proposals to alter parts of the Bill of Rights, in particular, seem to be singled out as being the most serious challenge to the Constitution by a runaway convention.[107]

These concerns, have, however, been characterized as overstated and alarmist. Critics note that the viewpoint elaborated above assumes an Article V Convention would be ideologically monolithic and dominated by a disciplined coalition dedicated to the imposition of an ideologically focused agenda. The breadth of opinion and viewpoints in a nation as populous and

[102] S. 119, 98th Congress, "The Constitutional Convention Implementation Act of 1984," Section 10(b).

[103] See William W. Van Alstyne, "Does Article V Restrict the States to Calling Unlimited Conventions Only? — A Letter to a Colleague," *Duke Law Journal*, volume 1978 (sic), issue 6, pp. 1295-1306.

[104] Quoted in Caplan, *Constitutional Brinksmanship*, pp. 146, 146.

[105] Almond, "Amendment by Convention: Our Next Constitutional Crisis?" p. 504.

[106] James M. LeMunyon, "A Constitutional Convention Can Rein in Washington," *Wall Street Journal*, March 31, 2010, available at http://online.wsj.com/article/SB10001424052702304370304575152231710551888.html.

[107] U.S. Congress, Senate, Committee on the Judiciary, *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess., S.Rept. 98-594 (Washington: GPO, 1984), p. 29.

diverse as the United States arguably makes this prospect questionable, however, not to mention the element of time that would inevitably pass during and between the various stages of the Article V Convention process. Justice Joseph Story cast doubt on the runaway convention theory on these grounds as early as 1833:

> Time is thus allowed, and ample time, for deliberation, both in proposing and ratifying amendments. They cannot be carried by surprise, or intrigue, or artifice. Indeed, years may elapse before a deliberate judgment may be passed upon them, unless some pressing emergency calls for instant action.[108]

In its 1984 report on S. 119 (98th Congress), the "Constitutional Convention Implementation Act," the Senate Judiciary Committee argued that any Article V Convention would be more like Congress: broad, inclusive, and essentially moderate. Here, the report echoed Madison's assurance that the "size and variety" of the nation serve as a deterrent to "faction."[109] Finally, the report noted that the founders did not provide unchecked power to the Article V Convention: every amendment proposed would be subject to the same stringent conditions faced by amendments proposed by Congress: "... the notion of a 'runaway' convention, succeeding in amending the Constitution in a manner opposed by the American people, is not merely remote, it is impossible."[110] To this judgment may be added the fact that even a runaway convention's proposed amendment or amendments would be subject to approval by the legislatures or conventions of three-fourths of the states before being incorporated as part of the Constitution.

An Article V Convention Limited to the Consideration of a Specifically Worded Amendment?—H.J.Res. 57 in the 112th Congress

One point on which most observers appear to agree is that an Article V Convention, either limited or general, could not be restricted to consider a specific amendment. During the 1980s campaign for a convention to consider a balanced budget amendment, a number of state legislatures proposed specific amendment language. Some would have accepted a "substantially similar" amendment, while others attempted to limit the convention solely to consideration of their particular amendments. In its 1993 study, the House Judiciary Committee indicated the former might be qualified, but:

> ... an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. Such an approach robs the Convention of its deliberative function which is inherent in article V language stating that the Convention's purpose is to "propose amendments." If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.[111]

Walter Dellinger has further argued that exact language proposals "short-circuit" the checks and balances built into Article V by the founders. According to his interpretation, they intended to

---

[108] Joseph Story, *Commentaries on the Constitution of the United States*, (Boston: Hilliard, Gray and Co., 1833) ss. 1824, volume 3, p. 688. Quoted in *The Founders' Constitution*, Web Edition, available online at http://press-pubs.uchicago.edu/founders/documents/a5s12.html.

[109] James Madison in *The Federalist*, Number 10, "The Size and Variety of the Union as a Check on Faction," pp. 129-136.

[110] *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess. S.Rept. 98-594, p. 29.

[111] *Is There a Constitutional Convention in America's Future?* p. 6.

provide sub-federal communities, embodied in the states, the authority to propose a convention to consider amendments, but deliberately refrained from giving the state legislatures the power to determine the exact text of the amendments to be proposed.[112]

The general acceptance of this interpretation is highlighted by the fact that a constitutional amendment has been introduced in the 112th Congress to require Congress, on the application of two thirds of the states, to call a convention to consider a specifically worded amendment proposed by the states. The convention's sole function would be "to decide whether to propose that specific amendment to the States...."[113] H.J.Res. 57 would eliminate some of the uncertainties concerning scope and format both of state applications, and of the convention itself, noted earlier in this report. It would definitively settle discussion over the constitutionality of proposing a convention to consider a specific amendment by empowering the states to do so. An asserted collateral advantage is that a convention summoned pursuant to the provisions of H.J.Res. 57 would be authorized to consider *only* the amendment in question, apparently eliminating the prospect of a runaway convention. A final point: since it makes no reference to repeal of existing arrangements, the amendment would arguably supplement, rather than supersede, current language concerning amendments proposed by an Article V Convention, in effect offering a second option for the states in the Article V process. As of August 2012, H.J.Res. 57 had been referred to the Subcommittee on the Constitution of the House Judiciary Committee, but no further action had been taken.

It may be noted that H.J.Res. 57 is a version of a proposal known as "the Madison Amendment," initially offered by the Madison Amendment Coalition, an ad hoc advocacy group established in 2010.[114] At the time of this writing, two organizations have endorsed the general concept: a task force of the American Legislative Exchange Council, identified earlier in this report as an organization of state legislators and other interested persons supporting "free markets, limited government, federalism, and individual liberty,"[115] and the National Taxpayers Union, an advocacy group promoting "lower taxes and smaller government at all levels."[116]

In the final analysis, the question "what sort of convention?" is not likely to be resolved unless or until the 34-state threshold has been crossed and a convention assembles. An estimate of the outcome of this process might well be based on the application process itself. It seems fair to assume that a convention summoned to consider a balanced budget, for instance, would confine itself to that issue. It is possible, as surmised by various observers over the years, that a convention could be "hijacked" by agenda-driven factions,[117] but it seems more likely that it would reflect James Madison's judgment in *The Federalist*, that the size and variety of the convention, as with that of the Union, would serve as a check to faction[118] Ultimately, an Article

[112] Dellinger, "The Recurring Question of the 'Limited' Constitutional Convention," p. 1632.

[113] H.J.Res. 57, 112th Congress, introduced on May 10, 2011, by Representatives John Culberson and Henry Cuellar.

[114] See "The Madison Amendment," available at http://www.madisonamendment.org/index.html.

[115] American Legislative Exchange Council website, available at http://www.alec.org/AM/Template.cfm?Section=About.

[116] "Leading Advocacy Group for Constitutional Federal Budget Reform Backs 'Madison Amendment' to Give States' Greater Say," National Taxpayers Union website, available at http://www.ntu.org/news-and-issues/government-reform/madison-amendment.html.

[117] LeMunyon, "A Constitutional Convention Can Rein In Washington," *Wall Street Journal*, March 31, 2010.

[118] James Madison, in *The Federalist*, Number 10, "The Size and Variety of the Union as a Check on Faction," pp. 129-136.

V Convention's proposals would be subject to the checks and balances written into the Constitution, which will be examined later in this report.

Is Congress Required to Propose Ratification of Amendments Approved by a Convention?

Once an Article V Convention has drafted and approved a constitutional amendment or amendments, the next step in the ratification process is their proposal by Congress to the states for consideration and approval. The fact that Congress is authorized in Article V to designate whether amendments will be considered in the states by ad hoc conventions or by the state legislatures arguably suggests that amendments *must* be transmitted by Congress in order for the ratification process to begin. The larger question is whether Congress is *required* to propose amendments adopted by an Article V Convention to the states. The range of opinion on this issue is predictably broad.

As noted earlier in this report, Congress gave active consideration to the Article V Convention process from the 1970s through the 1990s. During this period, a number of bills were introduced that sought to establish procedures in the event state petitions reached the two-thirds constitutional threshold. In most of these proposals, Congress reserved the right to decide whether an amendment or amendments proposed by an Article V Convention should be circulated to the states for approval and ratification. This assertion of authority rests on the assumption that Article V envisions only a limited convention, called in response to state applications dealing with a particular issue, for example, state legislative reapportionment in the 1960s, or the balanced budget amendment in the 1970s and 1980s. The report to accompany S. 119 in the 98th Congress stated explicitly that

> ... the convention is without authority to propose any amendment or amendments of a subject matter different than that set forth in the concurrent resolutions calling the convention.... In other words, the convention, although a sovereign body, is subject to the limitations of its constitutional charter — the concurrent resolution by Congress — which itself merely reflects the intent of two-thirds of the States in applying for a convention in the first place.[119]

The mechanism provided in S. 119, as in nearly all bills, was a concurrent resolution which stated that Congress would not submit the amendment or amendments in question to the states because the subject matter differed from the issue or question which the convention had been called to address.

Senator Sam Ervin, Jr., a champion of constitutional convention procedures legislation, defended Congress's assertion of authority to propose or withhold Article V Convention amendments from the ratification process, but he also favored that Congress be prohibited expressly from refusing to circulate an amendment "because of doubts about the merits of its substantive provisions."[120] He asserted that "unlimited power in the Congress to refuse to submit proposed amendments for ratification would destroy the independence of the second alternative amending process." Moreover, most later versions of the proposed convention procedures recognized this point by authorizing the states to bring legal action, often in the Supreme Court, if Congress failed to act in

[119] *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess. S.Rept. 98-594, pp. 40-41.

[120] Ervin, "Proposed Legislation to Implement the Convention Method of Amending the Constitution," p. 894.

calling a convention, or failed to propose a convention's amendments by a certain deadline, most commonly 30 days.[121]

The Goldwater Institute's 2010 study, focusing particularly on the role of the states in the process, found that Congress must propose the amendments approved by an Article V Convention to the states, but that the amendments must fall within the convention's mandate:

> Because the convention for proposing amendments is the state legislatures' fiduciary, it must follow the instructions of its principals — that is, limit itself to the agenda, if any, that states specify in their applications.... If the convention does propose amendments, Congress must send on to the states *those within the convention's call* (emphasis added).[122]

It is worth noting that the Goldwater Institute study offers a potential solution to this difficult question: the report suggests that an Article V Convention wishing to offer proposals outside the scope of its mandate could make additional policy recommendations, but not in the form of constitutional amendments.[123] While these instruments would not enjoy the same constitutional status as amendments proposed by the convention, they would arguably be accorded considerable attention in Congress, the states, and the policy arena at large, and might serve as the foundation for a national debate on the questions they address.

Conversely, a substantial range of constitutional commentators holds that Congress is ultimately obliged to propose any and all amendments approved by an Article V Convention to the states. Writing in the late 1960s, when the campaign to overturn the Supreme Court's decision on state legislative apportionment[124] seemed poised to cross the 34-state threshold, Morris Forkosch asserted:

> Congress has its own independent machinery to propose amendments in the first alternative, and to give Congress the power to review the proposals necessarily deprives the second alternative of its independence. As a result, Congress would become supreme, and Article V would automatically read that "The Congress ... call a[n advisory] Convention for proposing Amendments [to it]...." This would be an adoption of the very system rejected by the 1787 Convention.[125]

Professor Gerald Gunther similarly asserted that a congressional claim of veto power over amendments proposed by an Article V Convention directly contravened the founders' intent:

> In my view, the text, history and structure of Article V make a congressional claim to play a substantial role in setting the agenda of the convention highly questionable. If the state-initiated method for amending the constitution was designed for anything, it was designed to *minimize* (emphasis in original) the role of Congress. Congress was given only two ... extremely narrow responsibilities. First Congress must call the convention when thirty-four valid applications are at hand (and it is of course a necessary part of that task to consider the

[121] See, for instance, Section 15, S. 119, 98th Congress, Constitutional Convention Implementation Act of 1984 or Section 11(c), S. 214, 102nd Congress, Constitutional Convention Implementation Act of 1991.

[122] Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, p. 24.

[123] Ibid., p. 25.

[124] See under "State Legislative Apportionment, 1964-1969" in CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* , by Thomas H. Neale.

[125] Morris D. Forkosch, "The Alternative Amending Clause in Article V: Reflections and Suggestions," *Minnesota Law Review*, volume 51, issue 6, 1966-1967, p. 1079.

> validity of the applications and set up the machinery for convening the convention). Second, Congress has the responsibility for choosing a method of ratification once the convention submits its proposals. I am convinced that is all that Congress can properly do.[126]

He went on to suggest that any effort by Congress to "veto" an amendment proposed by an Article V Convention might prove to be unsustainable. Its delegates, he asserted, might not go quietly, arguing instead that they acted with justification, despite efforts to restrict their mandate, and that a refusal by Congress to propose an amendment to the states thwarted "the opportunity of the people to be heard through the ratification process."[127] Ultimately, Congress might be faced with an embarrassing political dilemma:

> ... might not Congress find it impolitic to refuse to submit the convention's proposals to ratification? I suggest that it is not at all inconceivable that Congress, despite its initial belief that it could impose limits, and despite its effort to impose such limits, would ultimately find it to be the course of least resistance to submit all of the proposals emanating from a convention ... to the ratification process, where the people would have another say.[128]

Ultimately, the question of whether Congress can refuse to propose an amendment may also depend on one of the issues addressed above: what manner of convention does Article V authorize? If only a limited convention is permissible, then Congress could argue strongly that it would be within its rights to refuse proposing an amendment that addressed an issue beyond the convention's mandate. If Article V were interpreted to include a general convention, either as authorized in its call, or a convention that addresses issues beyond those cited in the applications that led to its call, then Congress would arguably have less standing to assert its role as judge of validity of Article V Convention proposals.

Additional Issues for Congress

Beyond the three fundamental questions examined above — the mandate of the Article V Convention and the authority of Congress both in calling such a convention and proposing amendments emerging from its deliberations to the states — the process presents a range of other issues for consideration by Congress.

A Role for the President?

Perhaps one of the most obvious subsidiary questions surrounding the Article V Convention process is, "what is the President's role?" The immediate answer is that the Constitution clearly designates Congress as the sole agent in federal aspects of the process—by contrast, neither the President, nor the executive branch and the judiciary, are mentioned in Article V.

One point of view, noting the language of the article, maintains that the chief executive would not have a role in the Article V Convention process. The Senate Judiciary Committee's 1971 report on S. 215, the proposed Federal Constitutional Procedures Act, in the 92nd Congress, noted simply that "[i]nasmuch as the function of Congress is simply to operate the machinery to effectuate the

[126] Gerald Gunther, "The Convention Method of Amending the United States Constitution," *Georgia Law Review*, volume 14, number 1, fall 1979, p. 23.

[127] Ibid., p. 9.

[128] Ibid., pp. 9-10.

actions of the States and the convention, there is no proper place for a Presidential role."[129] Moreover, the committee went on to assert that the appropriate device for proposing an Article V Convention Amendment proposed in the bill was a concurrent resolution, a legislative vehicle that, by tradition, is not sent to the President for his approval.[130] Thirteen years later, without explicitly excluding the President, the same committee made what arguably was a broader claim of congressional authority over the Article V Convention process in its report on S. 119, the Constitutional Convention Implementation Act of 1984, 98th Congress:

> Although there is no explicit statement to this effect in Article V, there can be little doubt that the Congress is possessed with the authority to issue legislation on the subject matter of the "Constitutional Convention Implementation Act." Article V states in relevant part that, "The Congress ... on Application of the Legislatures of two thirds of the several states shall call a Convention for proposing Amendments." Congress' explicit authority under this provision is to "call" the convention. The powers invested in Congress under S. 119 are entirely a function of this responsibility, authorized under the "necessary and proper" clause of Article I, section 8, clause 18.[131]

In its 1974 study, the American Bar Association cast further doubt on a role for the President in the Article V Convention. The study argued that presidential approval would impose an additional requirement in the process, and that the potential of a presidential veto of a convention call would attach a de facto super-majority requirement not contemplated by the founders.[132] The report found that, under these circumstances, "the parallelism between the two initiating methods would be altered, in a manner that could only thwart the intended purpose of the convention process as an 'equal' method of initiating amendments."[133]

Some observers argue, however, that the President should have a role in certain aspects of the process. The President's constitutional authority to approve legislation is cited in support of this assertion:

> Every Order Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him....[134]

Proponents maintain that the President's authority to approve or disapprove legislation — his veto power — as provided in Article I, clause 7, would extend to a congressional call for an Article V Constitutional Convention, notwithstanding the choice of legislative vehicle. In more than 40 constitutional convention procedures bills introduced from the 1970s through the 1990s, a concurrent resolution, which does not permit presidential approval, was designated as the approved vehicle for a call for an Article V Convention. Constitutional scholar Charles Black emphatically rejected this choice, asserting that the call for a convention was too important not to come under the President's purview:

---

[129] U.S. Congress, Senate, Committee on the Judiciary, *Federal Constitutional Procedures Act*, report to accompany S. 215, Report No. 92-336, 92nd Cong., 1st sess. (Washington: 1971), p. 12.

[130] Ibid.

[131] *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess. S.Rept. 98-594, p. 21.

[132] American Bar Association, *Amendment of the Constitution by the Convention Method Under Article V*, p. 27.

[133] Ibid., p. 28.

[134] U.S. Constitution, Article I, Section 7, clause 3.

> ... a convention call would have the force of law — significant, vital law, comparable to a law establishing any other body with power to act. (As a contrasting example, S.J. Res. 197 [in the 92nd Congress], setting up an arbitration board ... went to the President.... What possible reason could there be for not following this procedure as to the setting up of a constitutional convention, more important by several orders of magnitude than an arbitration board? Can it be thought that Article I, Section 7, can be evaded by mere *nomenclature* [emphasis in the original] — by merely calling something a "Concurrent" rather than a "Joint" Resolution?[135]

Supporters of the President's role in the Article V Convention process also note that the legislative models offered by constitutional convention procedures bills in the past were more than simple "calls" for a convention. They prescribed a form and procedures for a convention, authorized use of federal resources and facilities, and provided for public funding of convention expenses. As Arthur Bonfield noted,

> ... Congress must necessarily make more than a mere call for a convention. Such a call would be meaningless without the inclusion of the specific terms upon which such a body is to be constituted, organized, and conducted. These terms to be spelled out by Congress would appear similar to the general kinds of legislation with which Congress normally deals. Consequently, no reason of logic dictates its different treatment in respect to the need for Presidential approval.[136]

From the standpoint of the broader national welfare, the same author noted that as the President is the only federal official elected and responsible to the American people as a whole, "[h]is participation in this process that would intimately affect all Americans and our nation as a whole seems, therefore, especially proper and natural."[137]

The House Judiciary Committee's 1993 study identified a potential alternative, noting that a call for an Article V Convention and the legislation carrying the call into effect need not be part of the same vehicle. This suggests a two-step process in which Congress could, on its own authority, pass a concurrent resolution summoning the convention, while additional arrangements implementing the convention call could be contained in a law-making measure, subject to presidential approval.[138]

Moving beyond the convention call to the actual proposal of amendments passed by an Article V Convention, most observers maintain that, as with the method of congressional proposal, the President would not be a part of the process. In this instance, it is asserted that the Supreme Court's ruling in *Hollingsworth v. Virginia* that the President's signature was not necessary when Congress proposed amendments to the states would arguably apply to those offered by a convention.[139]

---

[135] Black, "A Letter to a Congressman," p. 208.

[136] Bonfield, "Proposing Constitutional Amendments by Convention: Some Problems," p. 675.

[137] Arthur Earl Bonfield, "The Dirksen Amendment and the Article V Convention Process," *Michigan Law Review*, volume 66, 1967-68, p. 986.

[138] *Is There a Constitutional Convention in America's Future*, p. 14.

[139] See above at footnote 12.

"Checks and Balances" in the Article V Amendment Process

As noted above, the work of an Article V Convention, once proposed, would be subject to various checks and balances, including congressional authority to designate ratification by ad hoc conventions or state legislatures and the requirement that all amendments proposed must be ratified by three-fourths of the states. In addition, for nearly the past century, Congress has also required that amendments be ratified by the states within a seven-year time limit.

Congressional Authority to Propose Ratification by Convention or Legislature

Article V states explicitly that amendments "shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress." For amendments proposed by Congress, the convention alternative has been provided only for the 21st Amendment, which repealed the 18th Amendment, and with it, prohibition. All other amendments were sent to the state legislatures for ratification.

The alternative of ratification by state conventions or legislatures at the discretion of Congress was introduced by James Madison at the Philadelphia Convention and was adopted by a wide margin; beyond that, however, the reasoning of the founders is unclear. In their earlier discussion on how the Constitution itself was to be adopted, the delegates indicated that ratification by ad hoc conventions, on which they ultimately settled, would be more democratic and more reflective of the public will than by state legislatures. State legislatures, it was assumed, would be less open to change, and more interested in preserving the status quo.[140] This understanding evidently motivated the framers of the 21st Amendment, which effectively ended prohibition; according to one source, pro-repeal Members "favored this mode of ratification because they believed that they clearly had popular sentiment on their side, and furthermore, they distrusted the response to the issue of rural-dominated state legislatures."[141] One commentator observed that "[t]he convention, therefore, is the only mechanism of ratification which assures the expression of the people.... it seems apparent, however, that the convention mode will be used only when there is a powerful public opinion in its favor."[142] A contrary view was expressed by another scholar, who suggested that since amendments have been proposed by a convention, Congress should choose the state legislatures to ratify them, on the grounds that

> ... there should be two different bodies, one to check on the other; the different sets of delegates to the Convention and to the state's legislature may and should produce different reasons and arguments for so amending the Constitution.[143]

Thus the Constitution, in this seemingly minor delegation of authority, arguably endows Congress with a powerful check to the work of an Article V Convention.[144]

---

[140] Philip L. Martin, "Convention Ratification of Federal Constitutional Amendments," *Political Science Quarterly*, volume LXXXII, no. 1, March, 1967, pp. 61-71.

[141] Grimes, *Democracy and the Amendments to the Constitution*, p. 110.

[142] Martin, "Convention Ratification of Federal Constitutional Amendments," p. 71.

[143] Forkosch, "The Alternative Amending Clause in Article V: Reflections and Suggestions," pp. 1079-1080.

[144] "Congress has *complete freedom of choice* between the two methods of ratification recognized by Article V — by the legislatures of the States, or by conventions in the States (emphasis added)." U.S. Congress, The *Constitution of the United States of America, Analysis and Interpretation* (Washington: GPO, 2004), p. 952. Available at (continued...)

Approval by Three-fourths of the States Required for Ratification

A second constitutional check on amendments proposed by an Article V Convention also applies equally to those proposed by Congress: they must be ratified by a supermajority of three-fourths of the states. Here again, the founders' intentions are clear. As James Madison wrote in *The Federalist*:

> That useful alterations will be suggested by experience could not but be foreseen. It was requisite, therefore, that a mode for introducing them be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults.[145]

Amendments to the Constitution, whether proposed by Congress or an Article V Convention, were thus intended by the founders to reflect the measured and deliberate opinion of the nation. Their purposeful selection of the most stringent super-majority requirement provided in the Constitution strongly suggests the founders' sense of the gravity that applies to the amendment process.

Ratification Within Seven Years of Proposal

As noted earlier in this report, for the 18th, 20th, and all subsequent amendments, Congress has set a time limit of seven years for ratification. This standard is not found in the Constitution, but it has been confirmed by the Supreme Court in its 1921 ruling in *Dillon v. Gloss*.[146] In this case, the Court, "finding no express provision in Article V," authorizing the deadline nonetheless thought it was "reasonably implied" therein "that the ratification must be within some reasonable time after the proposal."[147] Notwithstanding this long tradition, a ratification deadline is not required by the Constitution, and it is possible that an Article V Convention might choose not to include one for any amendments it might propose.

This leads to a subsequent question: would Congress have the authority to attach a ratification deadline by including one in the concurrent resolution by which it transmits to the states an amendment or amendments proposed by an Article V Convention? Proponents might well argue that historic precedent suggests Congress does have this power, based on contemporary practice of including the ratification deadline in the resolution proposing amendments, rather than in the body of the amendments themselves. For instance, while the 18th, 20th, and all subsequent amendments have included a seven-year sunset provision for the ratification process, since the proposal of the 23rd Amendment, the time limit has been included *not* in the body of the amendment itself, but in the authorizing or "resolving" language found in the resolution proposing the amendment.[148] The argument here is that since Congress would use a concurrent

(...continued)

http://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-8-6.pdf.

[145] James Madison, in *The Federalist*, Number 43, "Powers Delegated to the General Government: III," p. 315.

[146] 256 U.S. 368 375 (1921).

[147] *The United States Constitution, Analysis and Interpretation*, p. 950, Available at http://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-8-6.pdf .

[148] For instance, in the 18th Amendment, Section 3 *of the amendment itself* preserves the ratification deadline. By comparison, the 26th Amendment (setting the voting age at 18) included the deadline in the resolving clause or preamble of the joint resolution (S.J.Res. 7, 92nd Congress) that proposed the amendment.

resolution to propose an amendment drafted by an Article V Convention (as envisioned in the various convention procedures acts discussed earlier in this report), it would also have the authority to include the traditional seven-year deadline in the resolving language of the resolution.

Details of the Article V Convention Process — Is Congress a Clerk or the Guardian?

Article V's barebones provisions provide little guidance on the role of Congress in the Article V Convention process. As noted earlier, the minimalist interpretation would assign a purely ministerial or clerical role to Congress: it should call a convention; impose minimal requirements on the convention as to its form, procedures, and agenda; and should refer whatever amendment or amendments are proposed by the convention to the states in timely fashion. In other words, call the convention, and then stand aside. There is, in fact, justification for this course of action from the pens of the founders themselves; as noted earlier, Alexander Hamilton explained the Article V Convention process in unmistakable terms:

> By the fifth article of the plan, the Congress will be obliged ... to call a convention for proposing amendments.... *The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body* (emphasis added)."[149]

This point of view is held in varying degrees by proponents of the Article V Convention. The Goldwater Institute's 2010 study summarized it as follows:

> The ministerial nature of congressional duties and the requirement that it call a convention at the behest of two-thirds of the state legislatures supports the conclusion in the previous section that in the state application-and-convention process, Congress acts primarily as the legislatures' agent. From the nature of that role, it follows that Congress may not impose rules of its own on the states or on the convention.... In the state-application-and-convention procedure, the states are in the position of the property owner, Congress in the position of the manager, and the convention for proposing amendments in the place of the contractor.[150]

Congress, however, has historically interpreted the language authorizing it to "call" an Article V Convention as providing a broad mandate to establish standards and procedures for such an assembly. In its 1984 report on S. 119, 98th Congress, the Senate Judiciary Committee expressed its judgment that

> ... [a]s a necessary incident of its responsibility to "call" the convention, Congress must have the authority to determine that the constitutional preconditions exist for such a convention.... The Congress, as well, clearly possesses the authority to set forth the necessary and attendant details of the convention.[151]

The House Judiciary Committee considered both points of view in its 1993 print, *Is There a Constitutional Convention in America's Future?*, ultimately suggesting that Congress does have a role beyond that of calling the convention and then standing aside, but noting that the extent of that function is open to dispute:

---

[149] Alexander Hamilton, in *The Federalist*, Number 85, "Conclusion," p. 546.

[150] Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, p. 21.

[151] *Constitutional Convention Implementation Act of 1984*, 98th Cong., 2nd sess. S.Rept. 98-594, p. 21.

> Congress, according to most commentators, has only two roles in the Convention process: To call the Convention and to choose a method of ratification. However, all are agreed that a range of ancillary functions are necessary and proper to carry out the primary roles. The disagreement begins in deciding the limits of the ancillary functions.[152]

Some of these ancillary functions associated with an Article V Convention are considered below.

Providing a Framework: The Precedent of Congressional Proposals to Shape an Article V Convention

As noted in the previous section, Congress has historically interpreted the language authorizing it to "call" an Article V Convention as providing a broad mandate to establish standards and procedures for such an assembly. This viewpoint evolved during the 1970s and 1980s as Congress considered legislation to establish procedures for an Article V Convention: by the mid-1980s, these bills generally included quite specific standards for state petitions, delegate apportionment formulas and delegate qualifications, convention procedures and funding, specific limits for the life of a convention, ratification procedures, and judicial review.

Between 1973 and 1992, 22 bills were introduced in the House and 19 in the Senate that sought to establish a procedural framework that would apply to an Article V Convention. Proponents argued that constitutional convention procedures legislation would eliminate many of the uncertainties inherent in first-time consideration of such an event and would also facilitate contingency planning, thus enabling Congress to respond in an orderly fashion to a call for an Article V Convention. The Senate, in fact, passed constitutional convention procedures bills, the "Federal Constitutional Convention Procedures Act," on two separate occasions: as S. 215 in 1971 in the 92nd Congress, and as S. 1272 in 1983, in the 98th Congress. Neither bill was considered in the House, although the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee held hearings on the general issue in 1985. As the prospect of an Article V Convention receded in the 1990s, congressional interest waned. Between 1991 and the time of this writing, no relevant legislation has been introduced. Although the content of these bills evolved over time, most of them were broadly similar, sharing various common elements, among which were the following.

State Application Procedures

All bills prescribed a standard format and content for state applications, provided delivery standards for applications, and set schedules for submissions to Congress, and for congressional declarations of receipt. Most proposals included a contemporaneity provision, essentially establishing a time limit, usually seven years, after which state applications would expire.

Application, Receipt, and Processing in Congress

The Secretary of the Senate and the Clerk of the House of Representatives were generally authorized to receive and retain applications, report them, and report to their respective chambers if the constitutional requirement was met. Most bills required the adoption of a concurrent resolution by the two chambers that valid applications had been received from two-thirds of the

[152] *Is There a Constitutional Convention in America's Future?*, pp. 28-29.

states. The House and Senate, by concurrent resolution, would then call for a convention, designating the place and time of the meeting, which would be not less than one year after the adoption of the resolution, and the nature of the amendment or amendments to be considered.

Number and Apportionment of Delegates

Apportionment of convention delegates among the states was generally set at the formula provided for the electoral college, with each state assigned a number equal to its combined Senate and House delegations. Some bills included the District of Columbia, assigning it three delegates, but others did not include the federal district. When combined with the per capita voting which most bills provided, this formula gave greater weight to differences in state population; as with the electoral college, it also recognized the federal system's position on constitutional equality of the states by providing each with an extra two delegates and votes, regardless of population.

Funding

Most bills provided that delegates and convention staff were to be compensated from federal funds, and delegates received immunity from arrest in most instances during the convention. Various federal agencies were authorized to provide support for the convention as requested, and convention expenses were to be covered by appropriated funds.

Convention Procedures

The Vice President was authorized in most versions to preside over the inaugural session and swear in the convention officers, after which time the permanent officers would preside over later sessions and the delegates would adopt their rules and procedures.

Most bills required that amendments were to be approved by two-thirds of the whole number of delegates, and that amendments were required to be consistent with the issue which the convention had been summoned to address. In most versions, as noted earlier, Congress reserved to itself the right to decide whether proposed amendments met this criterion.

The President pro tempore of the Senate and the Speaker of the House were required to transmit proposed amendments to the Administrator of General Services for circulation to the states unless both chambers passed a concurrent resolution of disapproval. Valid grounds for disapproval included departure from the policy issue for which the convention was called or failure to follow procedures prescribed in the authorizing legislation. Amendments proposed by a convention would be subject to standard constitutional requirements, that is, ratification by three-fourths of the states, either in their legislatures, or by ad hoc ratification conventions, as determined by Congress.

A Defined Term for the Convention

The convention was given a limited term, generally either six months or one year.

State Authority to Rescind Ratification of Proposed Amendments

Most versions of the bill authorized the states to rescind ratification of proposed amendments at any time before the constitutional ratification threshold of three-fourths of the states was attained.

Judicial Review

Later versions of constitutional convention procedures bills generally authorized judicial review and set procedures for court consideration of proposed amendments.

In the event the number of state applications for an Article V Convention approached the two-thirds constitutional requirement, Congress could choose to revisit this issue. If so, legislation introduced during the later decades of the 20th century could provide a range of models for procedures to provide for an Article V Convention.

What Are the Current Procedures for Receipt and Processing of State Applications by Congress?

The process by which the states currently register, and Congress acknowledges the receipt of, applications for an Article V Convention, as well as the occasional application for a specific amendment, is another area in which there are few established procedures. For this particular activity, Congress performs an essentially ministerial function.

In the absence of guidance from Congress, the state legislatures have historically forwarded their applications for an Article V Convention to an almost bewildering range of congressional officers and offices. For practical purposes, this is an area where the Senate and the House of Representatives, acting either jointly or individually, might choose to designate a single official or office to whom such applications should be addressed, such as the Secretary of the Senate and the Clerk of the House of Representatives, or, alternatively, the Speaker and the President pro tempore of the Senate. The law governing the transmission of state electoral college proceedings offers a potential example: in this instance, each state is required to transmit the vote of its electors to the President of the Senate (recall that the Vice President presides over the joint electoral vote count session in his capacity as President of the Senate), the secretary of state of their state, the Archivist of the United States, and the judge of the federal court in the district in which the electors assemble.[153] By designating specific officials, the statute avoids the uncertainty faced by states as to whom their electoral college results should be addressed, and by specifying multiple recipients, it ensures that the certificates will be safely delivered and retained.

Once they are received by Congress, state applications for an Article V Convention are classified as "Memorials."[154] As such, they may be addressed to the House or Senate as a whole, to the Speaker or the presiding officer of the Senate, or to individual Senators or Representatives. Memorials are printed on an occasional basis in the *Congressional Record* after they have been received.

[153] 3 U.S.C. 11.

[154] For additional information, see CRS Report 98-839, *Messages, Petitions, Communications, and Memorials to Congress*, by R. Eric Petersen.

The Senate assigns a "POM" (petitions or memorials) number to each memorial and prints the full text of memorials received from state legislatures from time to time under the heading "Petitions and Memorials" in the *Record*, as authorized by Rule VII of the *Standing Rules of the Senate*.[155]

House practice differs somewhat: memorials are customarily presented by the Speaker, in accord with Rule XII, clause 3 of the *Rules of the House*. They are assigned a number, and printed and recorded separately from other communications in the *Congressional Record*, under the heading "Memorials." Unlike the Senate, the House includes only a digest of the state measure.[156]

Rescissions of applications for an Article V Convention, which in recent years have been more common than new applications, are recorded the same way.[157]

The Senate and House of Representatives both place the consideration of constitutional amendments under the jurisdiction of their respective Committees on the Judiciary, and Memorials containing state applications are customarily referred to these committees. Both applications and rescissions are apparently retained by the Judiciary committees during the tenure of the Congress in which they were received, after which time they are transmitted to the National Archives and Records Administration for retention by the Center for Legislative Archives. There does not, however, appear to be a central repository where these documents are retained for the historical record. According to the National Archives, state applications are scattered through the center's various congressional document holdings.[158] Given this finding, and the fact that no single legislative branch officer or entity currently is tasked with recording and retaining all state applications for an Article V Convention, no definitive official list of such calls exists.

This is also an area in which the Senate and House of Representatives, acting jointly or separately, might consider more systematic procedures for the treatment of state applications for an Article V Convention, or for specific amendments, particularly with respect to retention of state applications by a single, designated, repository, for a period longer than the life of the current Congress in which they were received. Such action would also offer a corollary benefit for the purposes of accurate historical record keeping in the future.

Could Senators and Representatives Serve as Delegates to an Article V Convention?

An initial response to this query might be that Members of either house of Congress would be prohibited from serving as delegates to an Article V Convention. The House Judiciary Committee's 1993 study makes note of this argument, which stems from the Constitution's provision that

---

[155] See *Standing Rules of the United States Senate*, Rule VII, paragraph 1, available at http://rules.senate.gov/public/index.cfm?=Rule VII.

[156] See *Rules of the House of Representatives*, Rule XII, clause 3, at http://www.rules.house.gov/singlepages.aspx?NewsID=133&rsbd=165.

[157] Friends of the Article V Convention (FOAVC) maintains what it claims is a complete online archive of *Congressional Record* (and earlier congressional journals) images of state petitions, or digests thereof. This collection begins with 1899 and continues to the present. It is available at http://foavc.org/file.php/1/Amendments/index.htm.

[158] Letter from Rodney A. Ross, National Archives and Records Administration, Center for Legislative Archives, dated March 12, 2007. Available from the author of this report.

> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased [sic] during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.[159]

The report also cites assertions that Members serving as delegates would constitute "great potential for conflict of interest because Members would be viewed as acting both as regulators and as persons regulated."[160] Finally, it notes arguments also cited elsewhere in this report that the founders intended the Article V mechanism to be a way around congressional unwillingness to propose amendments.

At the same time, other observers have suggested that there is no constitutional prohibition against Senators and Representatives serving as delegates to an Article V Convention. In a 1974 study, the American Bar Association determined that the constitutional mandate prohibits Members from holding any additional office in one of the three branches of the U.S. government, but concluded that service as a "state-elected delegate to a national constitutional convention does not meet this standard."[161] Another commentator agreed, suggesting that Members of Congress could make a substantial addition to a convention: "in light of the delegates' function and possible impact on the constitutional scheme, it seems desirable that interested members of Congress be allowed to participate."[162] Finally, both the aforementioned sources cite as precedent the fact that several incumbent Delegates to Congress under the Articles of Confederation, "the United States in Congress Assembled," served with distinction as delegates to the Philadelphia Convention of 1787.

Convention Procedures: Ancillary Issues for Congress

The Article V Convention carries with it a range of ancillary questions, several of which are addressed in this section.

Would State Representation and Voting in the Convention be Equal? Proportional to Population? Or Both?

One issue would likely arise over the state representation formula at an Article V Convention. As noted earlier, the most widely discussed model would establish a convention including 535 (or 538, depending on whether the District of Columbia is included) delegates, allocated to each state according to the size of its electoral college delegation, that is, the combined total of each state's House of Representatives and Senate delegations.

A related question concerns vote allocation in an Article V Convention. Would delegates vote per capita, or would each state cast a single vote, during the convention's deliberations, and on the final question of proposing amendments? Here again, contemporary democratic practice might

[159] U.S. Constitution, Article I, Section 6, clause 2.

[160] *Is There a Constitutional Convention in America's Future?*, p. 20.

[161] American Bar Association, *Amendment of the Constitution by the Convention Method Under Article V*, p. 37.

[162] Forkosch, "The Alternative Amending Clause in Article V: Reflections and Suggestions," p. 1073. Professor Forkosch further suggested that federal judges would be able to serve as delegates to an Article V Convention, although he advised Congress to exclude them.

argue that the convention's size or vote allocation formula should more accurately reflect the great variations in state population than does the electoral vote delegate allocation model.[163] Expanding the number of convention delegates beyond the 535 or 538 previously contemplated would be one response to such concerns; another might be weighted voting, with the votes assigned to each state's delegation adjusted to reflect the population differential, regardless of the number of convention delegates. On the other hand, it could be argued that the allocation of electoral votes reflects the federal principal of fundamental equality among the states, notwithstanding the various population differentials. In fact, it could be noted that each state cast just a single vote in all deliberations at the Philadelphia Convention, and that, moreover, Article V also assigns equal weight to the various states in the ratification process, notwithstanding their population.

A subsidiary question would involve voting within delegations at the convention: if each state casts a single vote, what form would internal state delegation balloting take? Would a majority of delegate votes be required to cast the state vote in favor of a proposed amendment, or for that matter on any question before the convention, or would a plurality suffice?

Would the Convention Require a Super Majority of State or Delegate Approvals to Propose Amendments?

The Constitution is silent on the vote required to propose amendments in an Article V Convention. It might be argued that since the Constitution offers no guidance, it would be appropriate for the convention, or Congress, if it has passed an Article V Convention procedures act, to set the standard for successful proposal to the states. A strong argument could be made for adopting the two-thirds majority requirement already necessary for congressional proposal of amendments. One commentator argued for approval by two-thirds of the delegates to an Article V Convention, and suggested that Congress should include such a provision in any convention procedures legislation it considered.

> Congress should also provide that an affirmative vote of two-thirds of the delegates would be required to propose any given amendment to the states. In this way, it would assure a symmetry of concurrence in the bodies empowered to propose constitutional amendments — whether the body was Congress or a convention.... A two thirds requirement in such a convention would also guarantee that no amendment, regardless of its means of proposal, is ever submitted to the states before an overwhelming consensus as to its desirability is evidenced in a nationally oriented body.[164]

Proponents of a less restrictive requirement might suggest that, at two-thirds, the bar has been set too high, especially considering the stringent constitutional requisite that any amendment be approved by three-fourths of the states, and usually within seven years, in order to be ratified. The convention, they might argue, should send the amendment to the states and let the people decide. Moreover, they might note that while Article V sets two very specific super-majority requirements for constitutional amendments (a two-thirds vote of both houses for congressionally

[163] For instance, if delegates were apportioned according to the electoral college formula, each of California's delegates would represent 679,000 people, while each of Wyoming's three delegates would represent 190,000, by this measurement, providing a substantial arithmetical advantage to residents of the latter state. 2012 Census figures, computed by CRS.

[164] Bonfield, "Proposing Constitutional Amendments by Convention: Some Problems," p. 676.

proposed amendments, and ratification by three-fourths of the states), it provides no super-majority for amendments proposed by an Article V Convention. The inference here is that since the founders did not set a higher hurdle, they were satisfied that majority approval, or perhaps even a plurality vote in the convention, would be sufficient to propose amendments to the states.

The Role of the District of Columbia and U.S. Territories in an Article V Convention

Article V itself is silent on membership in an Article V Convention, so it is arguable that Congress, in summoning a convention to consider amendments, might choose to include the District of Columbia and U.S. territories as either full members at a convention, or possibly as observers. As noted previously, some versions of the Article V Convention procedures bills introduced in the late 20th century did provide for delegates representing the District of Columbia, although not for U.S. territories. There does not appear to be an impediment to participation by representatives of the federal district, although the ratification process for amendments is obviously limited to the states. An argument can be made for including Washington, DC, because it is part of the continental United States, is situated in the area of the original 13 states, and its residents have always been American citizens. Within this larger question, a further issue for Congress would be whether Washington should be accorded full membership in an Article V Convention, or observer or delegate status, as is the case with its representation in Congress. Here again, it could also be inferred that what the Constitution does not prohibit, it permits: since Article V does not set positive qualifications for the convention, the District of Columbia could be provided full voting membership. On the other hand, it could also be argued that Article V vests authority over the amendment process exclusively in Congress and the states, and that to expand membership in an Article V Convention to include delegates from the federal district was never contemplated by the founders, and is arguably extra-constitutional, if not unconstitutional.

The question of territorial representation at an Article V Convention is arguably more problematic. None of the convention procedures bills introduced from the 1970s through the 1990s provided delegates for any of the unincorporated territories or other possessions of the United States — American Samoa, Guam, the Commonwealths of the Northern Marianas and Puerto Rico, and the U.S. Virgin Islands. A case for territorial representation at a convention might turn on the point that these jurisdictions are controlled by the United States, their inhabitants are American citizens or nationals, and that they enjoy the privileges and protections of the Constitution. By extension, it may be asserted that that the territories at least deserve a seat at the table, perhaps as observers or delegates, rather than voting members.

However the question of District of Columbia and territorial representation at an Article V convention was decided, it must be recalled that, in the final analysis, none of these jurisdictions would take part in the ultimate process of ratifying any proposed amendments. Here the constitutional language is prescriptive, specifying that amendments must be ratified by vote of "the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof...."

Concluding Observations

The Article V Convention for proposing amendments was the subject of considerable debate and forethought in the Philadelphia Convention of 1787. Clearly intended as a balance to proposal of

amendments by Congress, it sought to provide the people, through their state legislatures, with an alternative method of offering amendments to the nation's fundamental charter, particularly if Congress proved incapable of, or unwilling to, initiate amendments on its own. It also enjoys distinction as one of the few provisions of the U.S. Constitution that has never been implemented. Under these circumstances, the Article V Convention presents many questions that Congress would be called on to consider, and perhaps answer, in the event a convention became a serious possibility. If so, Congress would not be without resources. It is perhaps fortunate that guideposts, if not simple answers, exist in the broad range of sources cited in this report: the original intent of the founders as preserved in the record; historical examples and precedents, particularly those of the last decades of the 20th century; a large body of scholarly writing on the subject; and not least, the work and products of two decades of serious congressional consideration, from the 1970s to the 1990s, of the question of an Article V Convention.

Author Contact Information

Thomas H. Neale
Specialist in American National Government
tneale@crs.loc.gov, 7-7883

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 596 - Generally revise laws related to false arrest and imprisonment
Sponsor: **Rep. Joe Read (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sam Forstag	ACLU of Montana	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 591 - Generally revise evidence laws
Sponsor: **Rep. Joe Read (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
MARK MURPHY	MTPOF		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 555 - Revise civil liability laws on personal property exempt from execution
Sponsor: **Rep. Matt Regier (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 581 - Revise gun storage laws
Sponsor: **Rep. Robert Farris-Olsen (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Gareth Bacon	Self		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 557 - Revise missing person laws
Sponsor: **Rep. Jonathan Windy Boy (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 552 - Establish Montana racial justice act
Sponsor: **Rep. Ed Stafman (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sam Forstag	ACLU of Montana	✓		
Keaton Sunchief	Western Native Voice	✓		
Reid Twotree	IOC	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 584 - Requiring certain costs paid to detention center be based on actual costs
Sponsor: **Rep. Kerri Seekins-Crowe (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Nanette Gilbertson	MSPOA	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 578 - Revise laws related to commitment of defendants
Sponsor: **Rep. Terry Moore (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Josh Racki	CASCADE County Attorney	X		
Anne Gregoire	City of Billings	X		
Dan Smith	MT Police Assn	X		
Nanette Gilbertson	MSPOA	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 559 - Revise requirements for dissemination of confidential criminal justice info
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 480 - Revise order of protection laws regarding incapacitated persons
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
ADRIANNE COLLINS	AARP MT	X		
Beth Brennan	Disability Rights MT	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 391 - Revise and enhance penalties for criminal distribution of dangerous drugs
Sponsor: **Rep. Frank Fleming (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
JOSH RACLI	CASCADE County MT Rep	X		
Michelle Mitchell Devine	Self	C		
Dan Smith	MT Police Assn	X		
Alan Dorne	DOJ	X		
Greg Dorrington	City of Billings & MDTL		X	
Sam Forstag	ACLU of MT		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 481 - Protect critical infrastructure
Sponsor: **Rep. Steve Gunderson (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Peggy Trenk	TSRA	X		
Rya. Hall	MT Electric Co-ops Assoc.	X		
Jestin Dupree	Fort Peck Tribes		X	
Lori Shaw	North Western Energy	✓		
Melissa Lewis	Charter Spectrum	✓		
Shelby DeMars	MT Assoc. of Oil, Gas, + Coal counties	X		
Alan Dohne	DOJ	X		
Sam Forstag	ACLU of Montana		✓	
Makenna Sellers	Northern Plains Resource Council		o	
Keaton Onchild	Western Native Voice		+	
Dalijah Killsback	Western Native Voice		+	
Adam Hair Jr	MTAFL-CIO		X	
Jordan Thompson	Conf. Salish + Kootenai Tr.		+	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 560 - Establish the Montana second amendment preservation act
Sponsor: **Rep. Steve Gunderson (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Garett Bacon	Self	X		
Amanda Curtis	MFPE		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 553 - Limit time of suspended sentences for felony convictions
Sponsor: **Rep. Jimmy Patelis (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
SK Ross	MT Innocence Project	X		
Zuri Moreno	Montana Budget & Policy	X		
Sam Forstag	ACLU of Montana	✓		
SJ Howell	MT Women Vote	X		
Cory Swanson	NCAA		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HJ 13 - Resolution for Article V US constitution convention of states
Sponsor: **Rep. Neil Duram (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Clare Parker	Self		✓	
Ed Dobrowski	Self		✓	
TERRY KRAMER		✓		
Billy Ross			✓	
Wayne Rusk			✓	
Jim Buterbaugh	Self		✓	
Garett Bacon	Self	X		
ED REGAN	Broadwater Co Republicans		X	
Cory OBrian	Self		X	
Curtis Hughes	Self		X	
Jen McGillvray	SD 23	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, February 24, 2021
HB 592 - Generally revise absolute liability laws
Sponsor: **Rep. Joe Read (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
MARK MURPHY	MACOP		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Judiciary Zoom Testimony 02.24.2021

Bill	Name	Location	Email	Position	Affiliation
HB-584	**NO REMOTE TESTIMONY**				
HB-578	**Proponent**				
HB-578	Aimee Grmoljez	Helena, Montana	agrmoljez@crowleyfleck.com	Proponent	City of Billings
HB-559	**NO REMOTE TESTIMONY**				
HB-480	**Proponents**				
HB-480	Adrian Miller	Billings, Montana	adrian.miller@sullivanmiller.com	Proponent	
HB-391	**Proponents**				
HB-391	Marty Lambert	Bozeman, Montana	marty.lambert@gallatin.mt.gov	Proponent	MT County Attorney's Association
HB-391	Scott Twito	Billings, Montana	stwito@co.yellowstone.mt.gov	Proponent	MT County Attorney's Association
HB-553	**NO REMOTE TESTIMONY**				
HB-481	**Opponents**				
HB-481	Derf Johnson	Helena, Montana	djohnson@meic.org	Opponent	MT Environmental Information Center
HB-481	Marcos Bullchild	Great Falls, Montana	bullchildmarcos333@gmail.com	Opponent	
HB-481	Dan Wenner	Billings, Montana	dwenner@elkriverlaw.com	Opponent	Fort Peck Assiniboine & Sioux Tribes
HB-481	Jestin Dupree	Poplar, Montana	jdupree@fortpecktribes.net	Opponent	Fort Peck Assiniboine & Sioux Tribes
HB-481	Pat Runs Through	Poplar, Montana	patricia.ironcloudrunsthrough@fo	Opponent	
HB-481	Floyd Azure	Poplar, Montana	fazure@fortpecktribes.net	Opponent	
HB-481	Josh Butterfly	Great Falls, Montana	butterflyjosh4@gmail.com	Opponent	Opening Doors
HB-481	Dick Iverson	Helena, Montana	rji@midrivers.com	Opponent	
HB-481	Laurie Little Dog	Bozeman, Montana	laurielittledog@gmail.com	Opponent	
HB-481	Ta'jin Perez	Billings, Montana	tperez@westernnativevoice.org	Opponent	
HB-481	Annie Ostby	Dagmar, Montana	a.a.ostby@gmail.com	Opponent	
HB-481	John Rundquist	Helena, Montana	rundquistador@gmail.com	Opponent	
HB-481	Terry Punt	Birney, Montana	jcazc@rangeweb.net	Opponent	
HB-481	Agnes Sullivan	Richey, Montana	jas@midrivers.com	Opponent	

HB-481	Dena Hoff	Glendive, Montana	dena.hoff47@gmail.com	Opponent	
HB-481	Joan Kresich	Livingston, Montana	joankreisch@gmail.com	Opponent	
HB-481	Pat Wilson	Bainville, Montana	rpw34ster@gmail.com	Opponent	
HB-560	**Proponents**				
HB-560	Keith Kubista	Stevensville, Montana	kredtailhawk@gmail.com	Proponent	
HJ-13	**Proponents**				
HJ-13	Clifford Sisko	Miles City, Montana	csisko@outlook.com	Proponent	
HJ-13	Richard Pence	Billings, Montana	rapence45@gmail.com	Proponent	Big Sky World View Forum
HJ-13	Tracy Schuster	Glentana, Montana	imhappyru@hotmail.com	Proponent	
HJ-13	Casey Collins	Helena, Montana	ccolli1212@gmail.com	Proponent	
HJ-13	**Opponents**				
HJ-13	Thomas Millett	Marion, Montana	simplytom65@yahoo.com	Opponent	
HJ-13	Daniel Keder	Great Falls, Montana	kederds@hotmail.com	Opponent	
HJ-13	Edward Regan	Townsend, Montana	edregan@rytimber.com	Opponent	Broadwater Co. Rep. Central Comm.
HJ-13	Levi McEuen	Broadus, Montana	thegiftranch@gmail.com	Opponent	
HJ-13	C. Amel Samuelson McEu	Broadus, Montana	mceuen@mac.com	Opponent	
HB-581	**Proponent**				
HB-581	Ione Young	Billings, Montana	ionemyoung@charter.net	Proponent	Montana Moms Demand Gun Sense Action
HB-555	**NO REMOTE TESTIMONY**				
HB-557	**NO REMOTE TESTIMONY**				
HB-591	**Opponent**				
HB-591	Wyatt Glade	Miles City, Montana	w.glade@co.custer.mt.us	Opponent	MT County Attorneys Association
HB-591	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Opponent	MT Coalition Against Domestic & Sexual Violence
HB-592	**Opponent**				
HB-592	Wyatt Glade	Miles City, Montana	w.glade@co.custer.mt.us	Opponent	MT County Attorneys Association

HB-596	**Opponent**				
HB-596	Wyatt Glade	Miles City, Montana	w.glade@co.custer.mt.us	Opponent	MT County Attorneys Association
HB-552	**Proponents**				
HB-552	Jasmine Kroktov	Bozeman, Montana	jaminekrotkov4mt@gmail.com	Proponent	
HB-552	Mysell Lyday	Missoula, Montana	myshell@montanalaw.com	Proponent	MT Association of Criminal Defense Lawyers
HB-552	Travis McAdam	Helena, Montana	travis@mhrn.org	Proponent	MT Human Rights Network
HB-552	Lita Pepion	Billings, Montana	litapepion@hotmail.com	Proponent	Indian People's Action

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION
COMMITTEE ON APPROPRIATIONS

Call to Order: Chair Llew Jones, on March 1, 2021 at 12:00 P.M., in Room 102 Capitol

ROLL CALL

Members Present:

Rep. Llew Jones, Chair (R)
Rep. Mary Caferro, Vice Chair (D)
Rep. Kenneth L. Holmlund, Vice Chair (R)
Rep. Matt Regier, Vice Chair (R)
Rep. Brad Tschida, Vice Chair (R)
Rep. Dan Bartel (R)
Rep. David Bedey (R)
Rep. John Fuller (R)
Rep. Frank Garner (R)
Rep. Jim Hamilton (D)
Rep. Mike Hopkins (R)
Rep. Jim Keane (D)
Rep. Connie Keogh (D)
Rep. Emma Kerr-Carpenter (D)
Rep. Bill Mercer (R)
Rep. Terry Moore (R)
Rep. Fiona Nave (R)
Rep. Jimmy Patelis (R)
Rep. Joe Read (R)
Rep. Vince Ricci (R)
Rep. Jerry Schillinger (R)
Rep. Sharon Stewart Peregoy (D)
Rep. Jonathan Windy Boy (D)

Members Excused:

Rep. Sue Vinton (R)

Staff Present:

Joe Triem, Legislative Fiscal Division
Julie Johnson, Legislative Fiscal Division
Jamie Bonilla, Committee Secretary
Anthony Nuno, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 406, 2/26/21; HB 391, 2/26/21; HB 404, 2/27/21; HB 46, 3/1/21; HB 206, 3/1/21; HB 336, 3/1/21; HB 497, 3/1/21; HB 484, 3/1/21; and HB 553, 3/1/21.
Executive Action:	HB 406, HB391, HB 404, HB 46, HB 206, HB 336, HB 497, HB 484, and HB 553.

HEARING ON HB 406

Opening Statement by Sponsor:
12:13:27 Rep. Mark Noland (R), HD 10, opened the hearing on HB 406, Revise absentee and mail ballot laws.

Proponents: None

Opponents:
12:16:05 Keaton Sunchild, Western Native Voice (WNV)
12:16:58 Katjana Stutzer, Montana Public Interest Group (MontPIRG)
12:18:32 Rep. Caferro
12:19:04 Sam Forstag, American Civil Liberties Union (ACLU)
12:20:47 Ruthie Barbour, Forward Montana
12:21:40 Alanna Wulf, Self
12:22:12 Daliyah Killsback, Western Native Voice
12:23:12 Chair Jones

Informational Testimony:
12:23:31 Angela Nunn, Secretary of State's Office (SOS)

Questions from Committee Members and Responses:
12:24:08 Rep. Hamilton
12:24:45 Rep. Noland

Closing by Sponsor:
12:24:50 Rep. Noland

EXECUTIVE ACTION ON HB 406

12:25:09 **Motion/Vote:** Rep. Holmlund moved that **HB 406 DO PASS**. Motion carried 17-7 by roll call vote with Rep. Caferro, Rep. Garner, Rep. Keane, Rep. Keogh, Rep. Kerr-Carpenter, Rep. Stewart Peregoy and Rep. Windy Boy voting no. Rep. Vinton voted by proxy.

HEARING ON HB 391

Opening Statement by Sponsor:
12:27:04 Rep. Frank Fleming (R), HD 51, opened the hearing on HB 391, Revise and enhance penalties for criminal distribution of dangerous drugs.

Proponents:
12:30:14 Nanette Gilbertson, Montana County Attorneys Association (MCAA)

Opponents: None

Informational Testimony:
12:31:42 Rhonda Lindquist, Office of Public Defender (OPD)
12:32:14 Cynthia Wolken, Department of Corrections (DOC)

Questions from Committee Members and Responses:
12:32:42 Rep. Hamilton
12:34:04 Rep. Fleming
12:34:16 Rep. Hamilton
12:34:26 Cynthia Wolken, DOC

Closing by Sponsor:
12:35:12 Rep. Fleming

EXECUTIVE ACTION ON HB 391

12:35:41 **Motion:** Rep. Holmlund moved that **HB 391 DO PASS**.

Discussion:
12:36:24 Rep. Stewart-Peregoy
12:37:46 Rep. Bedey

12:38:01 **Vote:** Motion carried 16-8 by roll call vote with Rep. Caferro, Rep. Hamilton, Rep. Holmlund, Rep. Keane, Rep. Keogh, Rep. Kerr-Carpenter, Rep. Stewart Peregoy and Rep. Windy Boy voting no. Rep. Vinton voted by proxy.

HEARING ON HB 404

Opening Statement by Sponsor:
12:39:56 Rep. Jimmy Patelis (R), HD 52, opened the hearing on HB 404, Generally revise education funding relating to oil and gas distribution.

12:41:21 Chair Jones
12:42:08 Rep. Patelis

Proponents:
12:43:46 E.J. Redding, Bainville School
12:43:48 Rep. Mercer re-joined the meeting

Opponents: None

Informational Testimony:
12:45:14 Paul Taylor, Office of Public Instruction (OPI)

Questions from Committee Members and Responses:
12:45:47 Rep. Bedey
12:47:41 Rep. Patelis
12:48:04 Chair Jones
12:48:06 Rep. Hamilton
12:49:08 Rep. Patelis
12:50:15 Rep. Windy Boy
12:50:54 Paul Taylor, OPI

Closing by Sponsor:
12:51:39 Rep. Patelis

EXECUTIVE ACTION ON HB 404

12:54:21 **Motion:** Rep. Holmlund moved that **HB 404 DO PASS**.

Discussion:
12:54:55 Chair Jones

12:56:50 **Substitute Motion/Vote:** Rep. Holmlund moved that **HB 404 BE TABLED**. Motion carried 14-10 by roll call vote with Rep. Bartel, Rep. Fuller, Rep. Jones, Rep. Nave, Rep. Patelis, Rep. Read, Rep. M. Regier, Rep. Ricci, Rep. Schillinger and Rep. Tschida voting no. Rep. Vinton voted by proxy.

HEARING ON HB 46

Opening Statement by Sponsor:
12:58:58 Rep. David Bedey (R), HD 86, opened the hearing on HB 46, Revise special education funding.

Proponents: None

Opponents: None

Informational Testimony:
13:00:29 Paul Taylor, Office of Public Instruction (OPI)

Questions from Committee Members and Responses: None

Closing by Sponsor:
13:00:49 Rep. Bedey

EXECUTIVE ACTION ON HB 46

13:01:01 **Motion/Vote:** Rep. Holmlund moved that **HB 46 DO PASS**. Motion carried 13-11 by roll call vote with Rep. Bartel, Rep. Fuller, Rep. Mercer, Rep. Moore, Rep. Nave, Rep. Patelis, Rep. Read, Rep. M. Regier, Rep. Ricci, Rep. Schillinger and Rep. Tschida voting no. Rep. Vinton voted by proxy.

HEARING ON HB 206

Opening Statement by Sponsor:
13:03:06 Rep. David Bedey (R), HD 86, opened the hearing on HB 206, Revise education laws related to tuition and in-state treatment.

Proponents: None

Opponents: None

Informational Testimony:
13:04:49 Kenneth Bailey, Office of Public Instruction (OPI)

13:05:06 Chair Jones

Questions from Committee Members and Responses: None

Closing by Sponsor:
13:05:32 Rep. Bedey

EXECUTIVE ACTION ON HB 206

13:05:56 **Motion/Vote:** Rep. Holmlund moved that **HB 206 DO PASS**. Motion carried unanimously by roll call vote. Rep. Vinton voted by proxy.

HEARING ON HB 336

Opening Statement by Sponsor:
13:07:55 Rep. Brandon Ler (R), HD 35, opened the hearing on HB 336, Interstate cooperative meat packing compact.

Proponents: None

Opponents: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
13:09:27 Rep. Ler

EXECUTIVE ACTION ON HB 336

13:09:34 **Motion/Vote:** Rep. Holmlund moved that **HB 336 DO PASS**. Motion carried 21-3 by voice vote with Rep. Hamilton, Rep. Holmlund and Rep. Hopkins voting no. Rep. Vinton voted by proxy.

HEARING ON HB 497

Opening Statement by Sponsor:
13:12:08 Rep. Bill Mercer (R), HD 46, opened the hearing on HB 497, Establish interim budget committees.

Proponents: None

Opponents: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
13:14:32 Rep. Mercer

EXECUTIVE ACTION ON HB 497

13:14:41 **Motion:** Rep. Holmlund moved that **HB 497 DO PASS**.

Discussion:
13:14:57 Rep. Hamilton
13:17:43 Chair Jones

13:18:03 **Vote:** Motion carried 19-5 by roll call vote with Rep. Hamilton, Rep. Keane, Rep. Keogh, Rep. Stewart Peregoy and Rep. Windy Boy voting no. Rep. Hopkins and Rep. Vinton voted by proxy.

HEARING ON HB 484

Opening Statement by Sponsor:
13:19:45 Rep. Jane Gillette (R), , opened the hearing on HB 484, Require state programs to participate in a health information exchange.

Proponents:
13:22:40 Jean Branscum, Montana Medical Association (MMA)

Opponents: None

Informational Testimony:
13:24:44 Amber Thorvilson, Department of Administration (DOA)

Questions from Committee Members and Responses:
13:25:08 Rep. Hamilton
13:26:05 Amber Thorvilson, DOA
13:26:27 Rep. Moore
13:27:30 Rep. Gillette
13:28:08 Rep. Caferro
13:29:18 Rep. Keane
13:29:38 Jean Branscum, MMA

Closing by Sponsor:
13:31:35 Rep. Gillette

EXECUTIVE ACTION ON HB 484

13:32:04 **Motion/Vote:** Rep. Holmlund moved that **HB 484 DO PASS**. Motion carried 21-3 by roll call vote with Rep. Fuller, Rep. Moore and Rep. Read voting no. Rep. Hamilton, Rep. Hopkins, Rep. Vinton and Rep. Windy Boy voted by proxy.

HEARING ON HB 553

Opening Statement by Sponsor:
13:34:19 Rep. Jimmy Patelis (R), HD 52, opened the hearing on HB 553, Limit time of suspended sentences for felony convictions.

Proponents: None

Opponents: None

Informational Testimony:
13:35:27 Tyna Wright, Office of Public Defender (OPD)

Questions from Committee Members and Responses: None

Closing by Sponsor:
13:36:02 Rep. Patelis

EXECUTIVE ACTION ON HB 553

13:36:12 **Motion/Vote:** Rep. Holmlund moved that **HB 553 DO PASS**. Motion carried unanimously by voice vote. Rep. Vinton and Rep. Windy Boy voted by proxy.

13:36:20 Rep. Kerr-Carpenter
13:38:08 Chair Jones
13:38:12 Rep. Keane
13:38:39 Chair Jones

ADJOURNMENT

Adjournment: 13:39:55

Jamie Bonilla, Secretary

jb

Additional Documents:

EXHIBIT(aph43aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE APPROPRIATIONS COMMITTEE

Date: Monday, March 1, 2021 **Time:** 12:00 P.M.
Place: Capitol **Room:** 102

BILLS and RESOLUTIONS HEARD:
HB 46 - Revise special education funding - Rep. David Bedey (R)
HB 206 - Revise education laws related to tuition and in-state treatment - Rep. David Bedey (R)
HB 336 - Interstate cooperative meatpacking compact - Rep. Brandon Ler (R)
HB 391 - Revise and enhance penalties for criminal distribution of dangerous drugs - Rep. Frank Fleming (R)
HB 404 - Generally revise education funding relating to oil and gas distribution - Rep. Jimmy Patelis (R)
HB 406 - Revise absentee and mail ballot laws - Rep. Mark Noland (R)
HB 484 - Require state programs to participate in a health information exchange - Rep. Jane Gillette (R)
HB 497 - Establish interim budget committees - Rep. Bill Mercer (R)
HB 553 - Limit time of suspended sentences for felony convictions - Rep. Jimmy Patelis (R)

EXECUTIVE ACTION TAKEN:

HB 406- Do Pass. Motion carried 17-7
HB 391- Do Pass. Motion carried 16-8.
HB 404 Be Tabled. Motion carried 14-10.
HB 46 Do Pass. Motion carried 13-11.
HB 206 Do Pass. Motion carried unanimously, 24-0.
HB 336 Do Pass. Motion carried 21-3.
HB 497 Do Pass. Motion carried 19-5.
HB 484 Do Pass. Motion carried 21-3.
HB 553 Do Pass. Motion carried unanimously, 24-0

Comments:

REP. Llew Jones, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL

DATE: 3/1/21

NAME	PRESENT	ABSENT/EXCUSED
REP. JONES, CHAIR	/	
REP. HOLMLUND, VICE CHAIR	/	
REP. REGIER, VICE CHAIR	/	
REP. TSCHIDA, VICE CHAIR	/	
REP. CAFERRO, VICE CHAIR	/	
REP. BARTEL	/	
REP. BEDEY	/	
REP. FULLER	/	
REP. GARNER	/	
REP. HAMILTON	/	
REP. HOPKINS	/	
REP. KEANE	/	
REP. KEOGH	/	
REP. KERR-CARPENTER	/	
REP. MERCER	/	
REP. MOORE	/	
REP. NAVE	/	
REP. PATELIS	/	
REP. READ	/	
REP. RICCI	/	
REP. SCHILLINGER	/	
REP. STEWART PEREGOY	/	
REP. VINTON		/
REP. WINDY BOY	/	

24 MEMBERS

HOUSE STANDING COMMITTEE REPORT

March 1, 2021

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 46** (first reading copy -- white) **do pass**.

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 13, No 11
Fiscal Note Required __

HB0046002SC.hlc

3.1.21
3R 1:50pm

HOUSE STANDING COMMITTEE REPORT

March 1, 2021

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 206** (first reading copy -- white) **do pass**.

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 24, No 0
Fiscal Note Required __

HB0206003SC.hlc

3.1.21
SR 1:45pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 336** (first reading copy -- white) **do pass**.

Signed: *Representative ~~Llew~~ Jones, Chair*

- END -

Committee Vote:
Yes 21, No 3
Fiscal Note Required __

HB0336002SC.hlc

3.1.21
2:48pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 391** (first reading copy -- white) **do pass.**

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 16, No 8
Fiscal Note Required __

HB0391002SC.hlc

3.1.21 TR 1:29pm R

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 406** (first reading copy -- white) **do pass**.

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 17, No 7
Fiscal Note Required __

HB0406002SC.hlc

3.1.21 R 1:29pm

HOUSE STANDING COMMITTEE REPORT

March 1, 2021

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 484** (first reading copy -- white) **do pass.**

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 21, No 3
Fiscal Note Required __

HB0484002SC.hlc

3-1-21
TR 1:49pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 497** (first reading copy -- white) **do pass**.

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 19, No 5
Fiscal Note Required __

HB0497002SC.hlc

3.1.21 1:58pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Appropriations** recommend that **House Bill 553** (first reading copy -- white) **do pass**.

Signed: _____
Representative Llew Jones, Chair

- END -

Committee Vote:
Yes 24, No 0
Fiscal Note Required __

HB0553002SC.hlc

3.1.21
TR 1:51pm

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE APPROPRIATIONS COMMITTEE

The **HOUSE APPROPRIATIONS COMMITTEE** TABLED

HB 404 - Generally revise education funding relating to oil and gas distribution - Rep. Jimmy Patelis (R)

by motion, on **Monday, March 1, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Jamie Bonilla
(For the Committee)

(For the Chief Clerk of the House)

2:08pm / 3/1
(Time) (Date)

March 1, 2021 (6:11pm) Jamie Bonilla, Secretary Phone: 444-4847

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 391 DATE 3/1/21

MOTION HB 391 Do Pass

Roll Call Vote 16-8

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR		1	
REP. REGIER, VICE CHAIR	1		
REP. TSCHIDA, VICE CHAIR	2		
REP. CAFERRO, VICE CHAIR		2	
REP. BARTEL	3		
REP. BEDEY	4		
REP. FULLER	5		
REP. GARNER	6		
REP. HAMILTON		3	
REP. HOPKINS	7		
REP. KEANE		4	
REP. KEOGH		5	
REP. KERR-CARPENTER		6	
REP. MERCER	8		
REP. MOORE	9		
REP. NAVE	10		
REP. PATELIS	11		
REP. READ	12		
REP. RICCI	13		
REP. SCHILLINGER	14		
REP. STEWART PEREGOY		7	
REP. VINTON	15		✓
REP. WINDYBOY		8	
REP, LLEW JONES, CHAIR	16		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 404 DATE 3/1/21

MOTION HB 404 Be Tabled

Roll Call 14-10

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR		1	
REP. TSCHIDA, VICE CHAIR		2	
REP. CAFERRO, VICE CHAIR	2		
REP. BARTEL		3	
REP. BEDEY	3		
REP. FULLER		4	
REP. GARNER	4		
REP. HAMILTON	5		
REP. HOPKINS	6		
REP. KEANE	7		
REP. KEOGH	8		
REP. KERR-CARPENTER	9		
REP. MERCER	10		
REP. MOORE	11		
REP. NAVE		5	
REP. PATELIS		6	
REP. READ		7	
REP. RICCI		8	
REP. SCHILLINGER		9	
REP. STEWART PEREGOY	12		
REP. VINTON	13		✓
REP. WINDYBOY	14		
REP, LLEW JONES, CHAIR		10	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 406 DATE 3/1/21

MOTION Do Pass

Roll Call Vote: 17-7

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR	2		
REP. TSCHIDA, VICE CHAIR	3		
REP. CAFERRO, VICE CHAIR		1	
REP. BARTEL	4		
REP. BEDEY	5		
REP. FULLER	6		
REP. GARNER	7		
REP. HAMILTON		2	
REP. HOPKINS	8		
REP. KEANE		3	
REP. KEOGH		4	
REP. KERR-CARPENTER		5	
REP. MERCER	9		
REP. MOORE	10		
REP. NAVE	11		
REP. PATELIS	12		
REP. READ	13		
REP. RICCI	14		
REP. SCHILLINGER	15		
REP. STEWART PEREGOY		6	
REP. VINTON	16		✓
REP. WINDYBOY		7	
REP, LLEW JONES, CHAIR	17		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB46 DATE 3/1/21

MOTION HB46 Do Pass.

Roll Call Vote 13-11

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR		1	
REP. TSCHIDA, VICE CHAIR		2	
REP. CAFERRO, VICE CHAIR	2		
REP. BARTEL		3	
REP. BEDEY	3		
REP. FULLER		4	
REP. GARNER	4		
REP. HAMILTON	5		
REP. HOPKINS	6		
REP. KEANE	7		
REP. KEOGH	8		
REP. KERR-CARPENTER	9		
REP. MERCER		5	
REP. MOORE		6	
REP. NAVE		7	
REP. PATELIS		8	
REP. READ		9	
REP. RICCI		10	
REP. SCHILLINGER		11	
REP. STEWART PEREGOY	10		
REP. VINTON	11		✓
REP. WINDYBOY	12		
REP, LLEW JONES, CHAIR	13		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 206 DATE 3/1/21

MOTION Roll Call Vote HB 206 Do Pass

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR	2		
REP. TSCHIDA, VICE CHAIR	3		
REP. CAFERRO, VICE CHAIR	4		
REP. BARTEL	5		
REP. BEDEY	6		
REP. FULLER	7		
REP. GARNER	8		
REP. HAMILTON	9		
REP. HOPKINS	10		
REP. KEANE	11		
REP. KEOGH	12		
REP. KERR-CARPENTER	13		
REP. MERCER	14		
REP. MOORE	15		
REP. NAVE	16		
REP. PATELIS	17		
REP. READ	18		
REP. RICCI	19		
REP. SCHILLINGER	20		
REP. STEWART PEREGOY	21		
REP. VINTON	22		✓
REP. WINDYBOY	23		
REP, LLEW JONES, CHAIR	24		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER 497 (HB) DATE 3/1/21

MOTION HB 497 Do Pass.

Roll Call Vote. 19-5

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR	2		
REP. TSCHIDA, VICE CHAIR	3		
REP. CAFERRO, VICE CHAIR	4		
REP. BARTEL	5		
REP. BEDEY	6		
REP. FULLER	7		
REP. GARNER	8		
REP. HAMILTON		1	
REP. HOPKINS	9		✓
REP. KEANE		2	
REP. KEOGH		3	
REP. KERR-CARPENTER	10		
REP. MERCER	11		
REP. MOORE	12		
REP. NAVE	13		
REP. PATELIS	14		
REP. READ	15		
REP. RICCI	16		
REP. SCHILLINGER	17		
REP. STEWART PEREGOY		4	
REP. VINTON	18		✓
REP. WINDYBOY		5	
REP, LLEW JONES, CHAIR	19		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 484 DATE 3/1/21

MOTION HB 484 Do Pass

Roll Call Vote 21 - 3

NAME	AYE	NO	PROXY
REP. HOLMLUND, VICE CHAIR	1		
REP. REGIER, VICE CHAIR	2		
REP. TSCHIDA, VICE CHAIR	3		
REP. CAFERRO, VICE CHAIR	4		
REP. BARTEL	5		
REP. BEDEY	6		
REP. FULLER		1	
REP. GARNER	7		
REP. HAMILTON	8		✓
REP. HOPKINS	9		✓
REP. KEANE	10		
REP. KEOGH	11		
REP. KERR-CARPENTER	12		
REP. MERCER	13		
REP. MOORE		2	
REP. NAVE	14		
REP. PATELIS	15		
REP. READ		3	
REP. RICCI	16		
REP. SCHILLINGER	17		
REP. STEWART PEREGOY	18		
REP. VINTON	19		✓
REP. WINDYBOY	20		✓
REP, LLEW JONES, CHAIR	21		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Appropriations Committee.

I desire to leave my proxy vote with Rep. Caferro.

BILL	AYE	NO
HB 484	X	
	-	
HB553	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Caferro for any amendments proposed on this date.

Rep. [signature] Date 3-1-21
(Signature)

Rep. Windy Boy

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Appropriations Committee.

I desire to leave my proxy vote with Rep. Cafero.

BILL	AYE	NO
HB 484	+	
~~HB 553~~	+	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Cafero for any amendments proposed on this date.

Rep. Jim Hamilton (Signature)

Date 3-1-21

Rep. Hamilton

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Appropriations Committee.

I desire to leave my proxy vote with Rep. _____.

BILL	AYE	NO
46	X	
484	X	
497	X	
553	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Holmlund for any amendments proposed on this date.

Rep. Mike Hopkins (Signature) Date 3/1/2021

Rep. Hopkins

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the House Appropriations Committee.

I desire to leave my proxy vote with Rep. M. Regier.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 406		X	
HB 391		X	
HB 404	to table		X
HB 46		X	
HB 206		X	
HB 336		X	
HB 484		X	
HB 497		X	
HB 553		X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. SE Vinton Sue Vinton 3/1/21

(Signature) (Print Name) (Meeting Date)

Rep. Sue Vinton

Montana State Legislature

2021 Legislative Session

WITNESS STATEMENTS

The following is an assortment of documents that are witness statements.

"A witness statement is a signed document recording the evidence of a witness. A definition "a written statement signed by a person which contains the evidence which that person would be allowed to give orally."

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

WITNESS STATEMENT

Bonilla, Jamie

From: leg-noreply@mt.gov
Sent: Sunday, February 28, 2021 4:59 PM
To: LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject: Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-28-21 16:58

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Michele Dieterich
Email: telechele@hotmail.com
Phone: (406) 363-7753
City, State: Hamilton
Written Statement: I am a resident of Ravalli County and have lived in Montana for over 35 years. I have been voting by mail for the past 18 years. My work takes me out of town a lot, so the mail in ballot allowed me to exercise my right to vote no matter where I was when it was time to vote. I have had no problems with it and it has worked well. I can even track my ballot to make sure that it was received. There is no need to revise anything regarding our voting system. It works very well and should be left alone.
Thank you for considering my comment.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bonilla, Jamie

From:	leg-noreply@mt.gov
Sent:	Sunday, February 28, 2021 2:54 PM
To:	LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject:	Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-28-21 14:54

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: League of Women Voters Montana
Name: Nancy Leifer
Email: nancleifer@gmail.com
Phone: (406) 207-9114
City, State: Missoula, Montana
Written Statement: Testimony on HB 406 submitted to House Appropriations Committee February 28, 2021, for Hearing March 1 Submitted by Nancy Leifer on behalf of the League of Women Voters Montana

The League of Women Voters Montana was founded over 100 years ago as a non-partisan non-profit volunteer organization. We do not endorse candidates or political parties. We do strengthen democracy by advocating for best practices in guaranteeing the integrity of our elections. The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed. The right of every citizen to vote has been a basic League principle since its origin.

The Wikipedia definition of integrity is "the practice of being honest and showing a consistent and uncompromising adherence to strong moral and ethical principles and values." Election integrity relies on two principles:

An election process that is accurate
An election process that enables every citizen to vote

Repeated studies and lawsuits have shown that there is no significant problem with voters abusing the right to vote using absentee ballots. HB 406 imposes unnecessary restrictions on a form of voting that is favored by three-quarters of Montana voters. More importantly, HB 406 is detrimental to election integrity on the second principle by preventing some citizens from being able to vote.

HB 406 would put limitations on those who don't have the wherewithal to get to a mailbox or ballot drop box themselves and need to rely on others.

The bill would disproportionately affect low income, young people and minority voters and would not be outweighed by improvement in election integrity. By preventing citizens from voting, HB 406 actually reduces election integrity and therefore is harmful to democracy.

HB 406 's ballot collection restrictions would cause problems for taxpayers because HB 406 would be subject to costly litigation. First, HB 406 violates the Montana state constitution for the same reasons that the state court ruled that BIPA was unconstitutional last fall. Second, HB 406 violates the First and Fourteenth Amendments of the U.S. Constitution because it creates a burden on eligible voters exercising their right to vote, especially for low-income and rural voters, and does not serve an important interest for Montana because there is no evidence of fraud from third party ballot collection in the State.

Third, HB 406 violates Section 2 of the federal Voting Rights Act because the restriction will disproportionately burden minority voters, particularly Native American voters living on reservations in Montana, as a consequence of lasting inequality in the State. Fourth, because HB 406 also requires election officials to verify the voters' signature for ballots collected and delivered by approved third parties, that provision is constitutional only if election officials follow adequate "notice and cure" procedures for the voter to fix perceived discrepancies before their ballot can be rejected. New signature matching requirements multiply concerns about arbitrary rejections and expose the bill to greater legal jeopardy if those arbitrariness risks are not diminished.

The practical burdens of HB 406 are very high in even the most mundane applications. When a voter's spouse, parent, child, or similar close family members plans to drop off the voter's completed ballot, that person would first have to be registered with the State, then correctly complete paperwork with the voter, then correctly complete paperwork at the polling place or election office to register the delivery with election officials. If these well-intentioned ballot deliverers make a mistake, they could be convicted of a criminal misdemeanor offense and incur a penalty of $500 for each wrongly delivered ballot.

The League of Women Voters asks the House Judiciary Committee to reject HB 406.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS
STATEMENT

Bonilla, Jamie

From:	leg-noreply@mt.gov
Sent:	Sunday, February 28, 2021 11:01 AM
To:	LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject:	Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-28-21 11:01

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Big Sky 55+
Name: Alanna Wulf
Email: awulf@bigsky55.org
Phone: (406) 697-2202
City, State: Billings, MT
Written Statement: Not Provided
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

Bonilla, Jamie

From:	leg-noreply@mt.gov
Sent:	Saturday, February 27, 2021 8:15 AM
To:	LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject:	Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-27-21 08:15

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: William Higgs
Email: markhiggs54@gmail.com
Phone: (406) 223-6488
City, State: Livingston, Montana
Written Statement: Our sovereignty as a state and as legal state voters must be protected. Pass 406 bill.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bonilla, Jamie

From:	leg-noreply@mt.gov
Sent:	Sunday, February 28, 2021 2:54 PM
To:	LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject:	Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-28-21 14:54
Follow Up Flag:	Follow up
Flag Status:	Flagged

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: League of Women Voters Montana
Name: Nancy Leifer
Email: nancleifer@gmail.com
Phone: (406) 207-9114
City, State: Missoula, Montana
Written Statement: Testimony on HB 406 submitted to House Appropriations Committee February 28, 2021, for Hearing March 1 Submitted by Nancy Leifer on behalf of the League of Women Voters Montana

The League of Women Voters Montana was founded over 100 years ago as a non-partisan non-profit volunteer organization. We do not endorse candidates or political parties. We do strengthen democracy by advocating for best practices in guaranteeing the integrity of our elections. The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed. The right of every citizen to vote has been a basic League principle since its origin.

The Wikipedia definition of integrity is "the practice of being honest and showing a consistent and uncompromising adherence to strong moral and ethical principles and values." Election integrity relies on two principles:

An election process that is accurate
An election process that enables every citizen to vote

Repeated studies and lawsuits have shown that there is no significant problem with voters abusing the right to vote using absentee ballots. HB 406 imposes unnecessary restrictions on a form of voting that is favored by three-quarters of Montana voters. More importantly, HB 406 is detrimental to election integrity on the second principle by preventing some citizens from being able to vote.

HB 406 would put limitations on those who don't have the wherewithal to get to a mailbox or ballot drop box themselves and need to rely on others.

The bill would disproportionately affect low income, young people and minority voters and would not be outweighed by improvement in election integrity. By preventing citizens from voting, HB 406 actually reduces election integrity and therefore is harmful to democracy.

HB 406 's ballot collection restrictions would cause problems for taxpayers because HB 406 would be subject to costly litigation. First, HB 406 violates the Montana state constitution for the same reasons that the state court ruled that BIPA was unconstitutional last fall. Second, HB 406 violates the First and Fourteenth Amendments of the U.S. Constitution

because it creates a burden on eligible voters exercising their right to vote, especially for low-income and rural voters, and does not serve an important interest for Montana because there is no evidence of fraud from third party ballot collection in the State.

Third, HB 406 violates Section 2 of the federal Voting Rights Act because the restriction will disproportionately burden minority voters, particularly Native American voters living on reservations in Montana, as a consequence of lasting inequality in the State. Fourth, because HB 406 also requires election officials to verify the voters' signature for ballots collected and delivered by approved third parties, that provision is constitutional only if election officials follow adequate "notice and cure" procedures for the voter to fix perceived discrepancies before their ballot can be rejected. New signature matching requirements multiply concerns about arbitrary rejections and expose the bill to greater legal jeopardy if those arbitrariness risks are not diminished.

The practical burdens of HB 406 are very high in even the most mundane applications. When a voter's spouse, parent, child, or similar close family members plans to drop off the voter's completed ballot, that person would first have to be registered with the State, then correctly complete paperwork with the voter, then correctly complete paperwork at the polling place or election office to register the delivery with election officials. If these well-intentioned ballot deliverers make a mistake, they could be convicted of a criminal misdemeanor offense and incur a penalty of $500 for each wrongly delivered ballot.

The League of Women Voters asks the House Judiciary Committee to reject HB 406.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bonilla, Jamie

From:	leg-noreply@mt.gov
Sent:	Saturday, February 27, 2021 8:15 AM
To:	LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject:	Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-27-21 08:15
Follow Up Flag:	Follow up
Flag Status:	Flagged

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: William Higgs
Email: markhiggs54@gmail.com
Phone: (406) 223-6488
City, State: Livingston, Montana
Written Statement: Our sovereignty as a state and as legal state voters must be protected. Pass 406 bill.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bonilla, Jamie

From: leg-noreply@mt.gov
Sent: Sunday, February 28, 2021 4:59 PM
To: LEG Applications Email Backup; LEG Committee-House Appropriations testimony
Subject: Public Comment for Bill HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations Successfully Submitted on 02-28-21 16:58

Follow Up Flag: Follow up
Flag Status: Flagged

Details:
Bill: HB-406: Revise absentee and mail ballot laws 2021-03-01 10:00 AM - (H) Appropriations
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Michele Dieterich
Email: telechele@hotmail.com
Phone: (406) 363-7753
City, State: Hamilton
Written Statement: I am a resident of Ravalli County and have lived in Montana for over 35 years. I have been voting by mail for the past 18 years. My work takes me out of town a lot, so the mail in ballot allowed me to exercise my right to vote no matter where I was when it was time to vote. I have had no problems with it and it has worked well. I can even track my ballot to make sure that it was received. There is no need to revise anything regarding our voting system. It works very well and should be left alone.
Thank you for considering my comment.
Files:
Testify via Zoom: No
Zoom Method: N/A

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 391

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Nanette Gilbertson	MT County Attorneys Assn	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021

HB 404

PLEASE PRINT

Name	Representing	Support	Oppose	Info
E. J. Redding	Bainville School	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 46

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 336

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021

HB 206

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 497

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 484

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Joan Branscum	MT Medical Assn	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 533

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE APPROPRIATIONS COMMITTEE

Monday, March 1, 2021 HB 406

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Keaton Sanchild	WWV		✓	
Katyana Stutzer	Mont PIRG		X	
Sam Forstag	ACLU of Montana		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Appropriations Testimony Requests					
Bill	**Name**	**Email**	**Affiliation**	**Position**	**Zoom Link**
HB-406	Ruthie Barbour	ruthie@forwardmontana.org	Forward Montana	Opponent	Sent
	Daliyah Killsback	daliyah.killsback@gmail.com	Western Native Voice	Opponent	Sent
	Alanna Wulf	awulf@bigsky55.org	Big Sky 55	Opponent	Sent

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on April 9, 2021 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Keith Regier, Chair (R)
Sen. Tom McGillvray, Vice Chair (R)
Sen. Diane Sands, Vice Chair (D)
Sen. Bryce Bennett (D)
Sen. Bob Brown (R)
Sen. John Esp (R)
Sen. Chris Friedel (R)
Sen. Steve Hinebauch (R)
Sen. Theresa Manzella (R)
Sen. Susan Webber (D)

Members Present by Zoom Video Conference:

Sen. Jen Gross (D)

Members Excused: None

Members Absent: None

Staff Present:

Julianne Burkhardt, Legislative Branch
Gwyn Schooler, Committee Secretary
Taylor Tyson, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SR 97, 4/8/2021; HB 602, 4/6/2021; HB 553, 4/6/2021; HB 559, 4/6/2021
Executive Action:	SR 97, HB 358, HB 436, HB 517, HB 519, HB 537, HB 578, HB 230, HB 553, HB 559, HB 481

HEARING ON SR 97

Opening Statement by Sponsor:
08:02:28 Sen. Cary Smith (R), SD 27, opened the hearing on SR97, Senate resolution authorizing intervention in SB 140 legal proceedings.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:
08:05:07 Bruce Spencer, State Bar of Montana

Questions from Committee Members and Responses:
08:05:29 Sen. Sands
08:05:41 Sen. Smith
08:05:58 Sen. Manzella
08:06:23 Sen. Smith

08:06:42 Sen. Bennett entered the meeting.

08:06:55 Sen. Gross
08:07:13 Sen. Smith
08:07:28 Sen. Gross
08:07:44 Sen. Smith
08:08:09 Sen. Gross
08:08:19 Julianne Burkhardt, Legislative Services Division (LSD)
08:08:38 Sen. Gross
08:09:02 Mr. Spencer, State Bar
08:09:43 Sen. Gross
08:10:04 Mr. Spencer
08:10:35 Sen. Gross
08:11:03 Sen. Smith
08:11:43 Sen. Gross
08:12:11 Sen. Smith
08:13:09 Ms. Burkhardt, LSD
08:14:10 Chair Regier
08:14:19 Ms. Burkhardt
08:14:51 Sen. Smith

Closing by Sponsor:
08:15:43 Sen. Smith

HEARING ON HB 559

Opening Statement by Sponsor:
08:16:24 Rep. Bill Mercer (R), HD 46, opened the hearing on HB559, Revise requirements for dissemination of confidential criminal justice info.

Proponents' Testimony:
08:20:42 Nanette Gilbertson, Montana County Attorneys' Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:21:42 Sen. Sands
08:22:26 Rep. Mercer
08:24:45 Sen. Sands
08:25:04 Rep. Mercer
08:25:14 Sen. Sands
08:25:24 Rep. Mercer
08:31:42 Sen. Sands
08:31:50 Chair Regier
08:32:01 Rep. Mercer

Closing by Sponsor:
08:32:35 Rep. Mercer

HEARING ON HB 602

Opening Statement by Sponsor:
08:32:59 Rep. Mallerie Stromswold (R), HD 50, opened the hearing on HB602, Require warrant for search of consumer DNA database.

Proponents' Testimony:
08:33:52 Patrick Webb, Americans for Prosperity (AFP)
08:37:04 Sam Forstag, American Civil Liberties Union
08:38:27 Katjana Stutzer, Montana Public Interest Research Group

Opponents' Testimony:
08:39:52 Mark Murphy, Montana Association of Chiefs of Police (MACOP)
08:47:11 Nanette Gilbertson, Montana County Attorneys' Association; Montana Sheriffs and Peace Officers Association

Informational Testimony: None

Questions from Committee Members and Responses:
08:48:35 Sen. Bennett
08:49:01 Rep. Stromswold
08:49:15 Sen. Bennett
08:49:41 Rep. Stromswold
08:50:16 Sen. McGillvray
08:50:56 Mr. Webb, AFP
08:51:37 Sen. Brown
08:52:03 Rep. Stromswold
08:52:33 Sen. Esp
08:52:57 Rep. Stormswold

08:53:20 Sen. Esp
08:53:45 Sen. Sands
08:54:33 Mr. Murphy, MACOP
08:55:32 Sen. Sands
08:55:58 Mr. Murphy
08:57:49 Sen. Sands
08:58:23 Mr. Murphy
08:59:08 Sen. Manzella
08:59:30 Mr. Murphy
08:59:49 Chair Regier
09:00:03 Mr. Murphy
09:00:50 Sen. Webber
09:01:45 Mr. Murphy
09:03:52 Sen. Webber
09:04:46 Mr. Murphy
09:05:25 Sen. Sands
09:05:50 Mr. Murphy
09:06:22 Sen. McGillvray
09:06:52 Mr. Webb
09:07:59 Sen. McGillvray
09:08:24 Mr. Webb
09:08:55 Sen. McGillvray
09:09:02 Mr. Webb
09:09:13 Sen. McGillvray
09:09:23 Mr. Webb
09:10:20 Sen. Friedel
09:11:04 Mr. Murphy
09:12:59 Sen. Friedel
09:14:16 Chair Regier
09:14:20 Mr. Murphy
09:15:33 Sen. Friedel
09:16:06 Mr. Murphy
09:16:42 Sen. Friedel
09:17:37 Mr. Murphy

Closing by Sponsor:
09:19:23 Rep. Stromswold

HEARING ON HB 553

Opening Statement by Sponsor:
09:21:28 Rep. Jimmy Patelis (R), HD 52, opened the hearing on HB553, Limit time of suspended sentences for felony convictions.
EXHIBIT(jus68a01)

Proponents' Testimony:
09:31:41 Sam Forstag, American Civil Liberties Union of Montana
09:33:02 Beth Brenneman, attorney, Disability Rights Montana
09:34:22 Henry Kriegel, Americans for Prosperity Montana
09:35:02 Janae Weber, citizen

09:38:45 Nanette Gilbertson, Montana County Attorneys' Association (MCAA)

Opponents' Testimony: None

Informational Testimony:
09:41:345 Mark Murphy, Montana Association of Chiefs of Police (MACOP)
EXHIBIT(jus68a02)

09:42:32 Cynthia Wolken, deputy director, Department of Corrections (DOC)

Questions from Committee Members and Responses:
09:42:52 Sen. Sands
09:43:26 Rep. Patelis
09:44:18 Sen. Sands
09:44:36 Rep. Patelis
09:44:44 Sen. Friedel
09:45:32 Ms. Gilbertson, MCAA
09:46:02 Sen. Friedel
09:46:20 Mr. Murphy, MACOP
09:46:28 Sen. Friedel
09:47:17 Mr. Murphy
09:48:45 Chair Regier
09:49:01 Ms. Wolken, DOC
09:49:55 Sen. McGillvray
09:50:16 Rep. Patelis
09:51:03 Sen. McGillvray
09:51:13 Rep. Patelis
09:51:51 Sen. McGillvray
09:52:02 Rep. Patelis

Closing by Sponsor:
09:52:14 Rep. Patelis

09:53:58 Recess
10:20:56 Reconvene

EXECUTIVE ACTION ON SR 97

10:21:08 **Motion/Vote:** Sen. McGillvray moved that **SR 97 BE ADOPTED**. Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

EXECUTIVE ACTION ON HB 230

10:22:02 Chair Regier

10:22:20 **Motion/Vote:** Sen. McGillvray moved to **RECONSIDER THE MOTION** on **HB 230**. Motion carried 10-1 by voice vote with Sen. Gross voting no.

10:22:46 **Motion:** Sen. McGillvray moved that **HB 230 BE CONCURRED IN**.

10:23:00 Julianne Burkhardt, Legislative Services Division (LSD)

10:24:22 **Motion:** Sen. McGillvray moved that **HB 230 BE AMENDED**.
EXHIBIT(jus68a03)

Discussion:
10:24:41 Sen. Esp
10:24:54 Ms. Burkhardt, LSD
10:25:19 Chair Regier

10:26:38 Without objection, Sen. McGillvray withdrew the **BE AMENDED** motion.

EXECUTIVE ACTION ON HB 358

10:26:56 **Motion:** Sen. McGillvray moved that **HB 358 BE CONCURRED IN**.

10:27:29 **Motion:** Sen. Esp moved that **HB 358 BE AMENDED**.
EXHIBIT(jus68a04)

Discussion:
10:29:46 Julianne Burkhardt, Legislative Services Division (LSD)
10:30:07 Sen. Gross
10:30:52 Ms. Burkhardt, LSD
10:31:55 Sen. Esp
10:32:24 Sen. Gross
10:32:39 Sen. Bennett
10:33:24 Sen. Esp
10:34:06 Sen. Sands
10:34:45 Sen. Esp
10:35:19 Sen. Sands
10:35:53 Chair Regier
10:35:58 Sen. Sands
10:36:05 Sen. Gross
10:36:58 Sen. Esp

10:37:35 **Vote:** Motion carried 10-1 by roll call vote with Sen. Bennett voting no.

10:38:10 **Motion:** Sen. McGillvray moved that **HB 358 BE CONCURRED IN AS AMENDED**.

Discussion:
10:38:29 Sen. Sands

10:38:57 **Vote:** Motion carried unanimously by voice vote. Sen. Esp will carry the bill.

EXECUTIVE ACTION ON HB 436

10:39:39 **Motion:** Sen. McGillvray moved that **HB 436 BE CONCURRED IN**.

10:39:58 **Motion:** Sen. McGillvray moved that **HB 436 BE AMENDED**.
EXHIBIT(jus68a05)

Discussion:
10:41:04 Julianne Burkhardt, Legislative Services Division (LSD)
10:43:19 Sen. Brown

10:45:38 **Substitute Motion/Vote:** Sen. Brown made a substitute motion that **HB 436 BE** TABLED. Substitute Motion carried 8-3 by roll call vote with Sen. Friedel, Sen. Hinebauch and Sen. McGillvray voting no.

EXECUTIVE ACTION ON HB 481

10:47:05 **Motion:** Sen. McGillvray moved that **HB 481 BE CONCURRED IN**.

Discussion:
10:47:16 Julianne Burkhardt, Legislative Services Division (LSD)
10:47:50 Sen. Friedel
10:48:10 Ms. Burkhardt, LSD

10:48:26 Without objection, Sen. McGillvray withdrew the **BE CONCURRED IN** motion.

EXECUTIVE ACTION ON HB 517

10:49:23 **Motion:** Sen. McGillvray moved that **HB 517 BE CONCURRED IN**.

Discussion:
10:49:34 Julianne Burkhardt, Legislative Services Division
10:49:51 Sen. Sands

10:50:34 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Regier will carry the bill.

EXECUTIVE ACTION ON HB 519

10:51:50 **Motion:** Sen. McGillvray moved that **HB 519 BE CONCURRED IN**.

10:52:00 **Substitute Motion/Vote:** Sen. Esp made a substitute motion that **HB 519 BE TABLED**. Substitute Motion carried 8-3 by roll call vote with Sen. Friedel, Sen. Hinebauch and Sen. Manzella voting no.

EXECUTIVE ACTION ON HB 537

10:53:16 **Motion:** Sen. McGillvray moved that **HB 537 BE CONCURRED IN**.

10:53:33 **Motion:** Sen. McGillvray moved that **HB 537 BE AMENDED**.
EXHIBIT(jus68a06)

Discussion:

10:53:59 Julianne Burkhardt, Legislative Services Division (LSD)

10:55:19 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

10:56:15 **Motion:** Sen. McGillvray moved that **HB 537 BE CONCURRED IN AS AMENDED**.

Discussion:

10:56:26 Sen. Sands
10:56:59 Chair Regier
10:57:16 Sen. Friedel
10:57:47 Sen. Gross
10:58:02 Ms. Burkhardt, LSD
10:58:34 Sen. Gross
10:59:39 Sen. Esp

11:00:06 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Friedel will carry the bill.

EXECUTIVE ACTION ON HB 578

11:01:21 **Motion:** Sen. McGillvray moved that **HB 578 BE CONCURRED IN**.

Discussion:

11:01:32 Sen. McGillvray
11:01:42 Chair Regier

11:01:49 **Motion:** Sen. McGillvray moved that **HB 578 BE AMENDED CONCEPTUALLY**.

Discussion:

11:02:39 Chair Regier
11:02:42 Sen. McGillvray
11:02:59 Julianne Burkhardt, Legislative Services Division (LSD)
11:03:12 Chair Regier
11:03:24 Sen. McGillvray
11:03:32 Sen. Sands
11:03:41 Chair Regier
11:03:50 Sen. Esp

11:04:00 Without objection, Sen. McGillvray withdrew the **BE AMENDED** motion.

11:04:15 Sen. Gross
11:05:04 Sen. McGillvray
11:05:09 Chair Regier

11:05:22 **Vote:** Motion carried unanimously by voice vote. Sen. McGillvray will carry the bill.

11:05:53 Chair Regier
11:06:10 Sen. Friedel
11:06:30 Chair Regier

EXECUTIVE ACTION ON HB 230

11:06:35 **Motion:** Sen. McGillvray moved that **HB 230 BE CONCURRED IN**.

11:06:52 **Motion:** Sen. McGillvray moved that **HB 230 BE AMENDED**.
EXHIBIT(jus68a07)

Discussion:
11:07:04 Julianne Burkhardt, Legislative Services Division (LSD)

11:07:45 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

11:08:38 **Motion:** Sen. McGillvray moved that **HB 230 BE CONCURRED IN AS AMENDED**.

11:08:47 **Motion:** Sen. McGillvray moved that **HB 230 BE AMENDED**.
EXHIBIT(jus68a08)

Discussion:
11:09:01 Ms. Burkhardt, LSD

11:10:13 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

11:10:57 **Motion/Vote:** Sen. McGillvray moved that **HB 230 BE CONCURRED IN AS AMENDED**. Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Regier will carry the bill.

EXECUTIVE ACTION ON HB 481

11:12:51 **Motion:** Sen. McGillvray moved that **HB 481 BE CONCURRED IN**.

11:13:10 **Motion:** Sen. McGillvray moved that **HB 481 BE AMENDED**.
EXHIBIT(jus68a09)

Discussion:
11:13:30 Julianne Burkhardt, Legislative Services Division (LSD)
11:18:13 Chair Regier
11:18:19 Sen. Sands
11:19:01 Sen. Manzella
11:19:24 Ms. Burkhardt, LSD

11:19:53 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

11:20:34 **Motion:** Sen. McGillvray moved that **HB 481 BE CONCURRED IN AS AMENDED**.

11:20:42 **Motion:** Sen. Esp moved that **HB 481 BE AMENDED**.
EXHIBIT(jus68a10)

Discussion:
11:21:02 Sen. Sands
11:21:11 Sen. Esp
11:21:26 Sen. McGillvray

11:21:40 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

11:22:20 **Motion:** Sen. McGillvray moved that **HB 481 BE CONCURRED IN AS AMENDED**.

Discussion:
11:22:35 Sen. Webber
11:24:47 Sen. Bennett
11:26:44 Sen. Esp
11:27:39 Sen. Sands
11:28:57 Sen. Gross
11:29:37 Ms. Burkhardt
11:29:47 Sen. Gross
11:30:03 Ms. Burkhardt

11:30:24 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Brown will carry the bill.

EXECUTIVE ACTION ON HB 553

11:31:19 Chair Regier

11:32:07 **Motion:** Sen. McGillvray moved that **HB 553 BE CONCURRED IN**.

11:32:16 **Motion:** Sen. McGillvray moved that **HB 553 BE AMENDED**.
EXHIBIT(jus68a11)

Discussion:
11:32:32 Julianne Burkhardt, Legislative Services Division (LSD)
11:32:42 Sen. Sands

11:33:25 **Vote:** Motion carried unanimously by voice vote.

11:33:36 **Motion:** Sen. McGillvray moved that **HB 553 BE CONCURRED IN AS AMENDED**.

Discussion:
11:33:49 Sen. Friedel

11:34:13 Sen. Sands
11:34:49 Chair Regier

11:34:55 **Vote:** Motion carried unanimously by voice vote. Sen. Sands will carry the bill.

EXECUTIVE ACTION ON HB 559

11:35:22 Chair Regier

11:35:58 **Motion:** Sen. McGillvray moved that **HB 559 BE CONCURRED IN**.

Discussion:
11:36:13 Julianne Burkhardt, Legislative Services Division

11:39:06 **Motion:** Sen. McGillvray moved that **HB 559 BE AMENDED**.
EXHIBIT(jus68a12)

Discussion:
11:39:24 Sen. Sands

11:39:51 **Vote:** Motion carried unanimously by voice vote.

11:40:04 **Motion/Vote:** Sen. McGillvray moved that **HB 559 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. Sen. Manzella will carry the bill.

11:40:41 Chair Regier

ADJOURNMENT

Adjournment: 11:41 AM

Gwyn Schooler, Secretary

gs

Additional Documents:

EXHIBIT(jus68aad.pdf)

SENATE JUDIC.
Exhibit No. 1
Date: 4/9/21
Bill No. HB 553

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; ~~PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES;~~ AMENDING ~~SECTIONS~~ SECTION 46-18-201 ~~AND 46-18-208~~, MCA; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE~~ APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) AExcept as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner

that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

~~(i)~~(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

~~(ii)~~(C) 15 years for a violent offender, as defined in 46-23-502, and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106;

~~(iii)~~(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

~~(iv)~~(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-

503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the

offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

~~**Section 2.** Section 46-18-208, MCA, is amended to read:~~

~~"**46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the sentence if:~~

~~(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or~~

~~(b) in the case of a suspended sentence:~~

~~(i) the defendant was sentenced prior to [the effective date of this act], has served more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's offense, and has demonstrated compliance with supervision requirements; or~~

~~(i)(ii) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and~~

~~(ii)(iii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.~~

~~(2) The motion must set forth the following:~~

~~(a) why the defendant meets the time limitations provided in subsection (1); and~~

~~(b) how the defendant has demonstrated compliance with supervision requirements.~~

~~(3) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.~~

~~(4) The department of corrections shall make reasonable efforts to notify the victim if required by 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following information:~~

~~(a) a copy of the motion;~~

~~(b) written notice that:~~

~~(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;~~

~~(ii) if a hearing is set, the date, time, and place of the hearing; and~~

~~(iii) the victim may appear and testify at any hearing held on the motion.~~

~~(5) The court may hold a hearing on its own motion and may consider a hearing request from the county attorney or defendant.~~

~~(6) If~~ Except as provided in subsection (7), ~~if~~ the court requires a hearing on the motion, the court may grant the motion if it finds that:

~~(a) termination of the remainder of the sentence is in the best interests of the defendant and society;~~

~~(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and~~

~~(c) the defendant has paid all restitution and court-ordered financial obligations in full.~~

~~(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this act] and~~ meets the conditions in subsection (1)(b)(i)~~."~~

~~NEW SECTION.~~ **~~Section 3. Effective date.~~** ~~[This act] is effective on passage and approval.~~

~~NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to sentences that were imposed prior to [the effective date of this act] when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow.~~

NEW SECTION. **Section 2.** {standard} **Saving clause**. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

COORDINATION SECTION. **Section 3. Coordination instruction**. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

NEW SECTION. **Section 4. Applicability**. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

SENATE JUDICIARY
Exhibit No. 2
Date: 4/9/21
Bill No. HB 553

States Can Shorten Probation and Protect Public Safety

Wide variations in policies and term lengths across states point to opportunities for reform

REPORT December 3, 2020 Topics: U.S. State Policy
Projects: Public Safety Performance
Tags: Public safety
Read time: 34 min

Getty Images

Overview

More than 3.5 million, or 1 in 72, adults were on probation in the United States at the end of 2018—the most recent year for which U.S. Bureau of Justice Statistics (BJS) data is

variation across states. Average terms range from nine months in Kansas to nearly five years (59 months) in Hawaii.

- **Although the average total time spent on probation declined nationally by roughly 22 days, or about 3%, between 2000 and 2018, it increased in 28 states.** In 14 states, average total time on probation rose by more than a third over that span. Across the 250,000 people who exited probation in those 14 states in 2018, that increase adds up to almost 300,000 additional years spent under supervision, in the aggregate.

- **Length of time spent under supervision is a key factor in the size of the probation population.** Fifteen of the 22 states that cut their average probation terms between 2000 and 2018 also saw declines in their probation populations. Further, in three of those 15 states, the supervision populations fell even though the number of people entering probation increased. These findings demonstrate that shortening supervision terms is a critical component of efforts to reduce probation populations, allowing agencies to redirect public safety resources to provide the greatest benefit —particularly toward the early months and individuals at highest risk of re-offending.

- **Many people on supervision serve longer terms than are necessary for public safety.** An analysis of data from Oregon and South Carolina showed that, among people who were on probation for a year without being arrested, more than 90% could have spent less time on supervision without an impact on recidivism (as measured by re-arrests). Had these individuals served the shortest supervision terms needed to minimize re-offending, the average probation length in South Carolina would have been shortened from 26 to 18 months and in Oregon from 24 to 14 months, without an associated increase in arrests. These reductions would have cut the two states' average daily populations (ADPs) on supervision by 32% and 44%, respectively, with the declines driven largely by people whose probation terms could be reduced by two or more years. Oregon and South Carolina were chosen for this analysis because of their ability and willingness to provide person-level arrest and probation data and because their average supervision term lengths during the study period (24 and 26.2 months, respectively) were close to the national average of 22.4 months. Although these states may not be representative of the U.S. as a whole, the findings are nevertheless sufficiently compelling to support efforts by other jurisdictions to review their own data and evaluate whether their probation terms are longer than is necessary to protect public safety.

stages of supervision can help improve success rates among people on probation, reduce officer caseloads, and protect public safety.

Although probation was originally conceived as an alternative to incarceration, criminal justice officials, policymakers, and other stakeholders increasingly acknowledge that keeping people on probation longer than is needed to deliver public safety benefits carries unnecessary and unproductive costs and wastes scarce resources.[6] This report aims to help state and local leaders better understand and address the critical issue of probation length by providing essential data and offering policies and practices that can improve outcomes for probation departments and the people they supervise across the U.S.

Data methods

This report primarily relies on BJS Annual Probation and Annual Parole survey data, which provides an opportunity to better understand probation populations in the U.S.[7] Using this data, this report estimates length of time on probation using the average of the year-start and year-end probation population, dividing the number of annual exits by this population figure, and taking the inverse of this exit rate (see the appendix for more detail).[8] This calculation enables estimates of average probation lengths for all 50 states but does not speak to the characteristics of individual terms and how those contribute to the average length. For example, a large population on shorter misdemeanor terms could obscure a small number of very long felony terms in a given state and vice versa.

Probation lengths across the U.S.

Probation lengths in 2018

The national average probation term length in 2018 was 22.4 months. Analysis of 2018 average lengths shows significant variation among states: Average probation lengths ranged from just nine months in Kansas to 59 months, or close to five years, in Hawaii. (See Figure 1.)

Average Probation Terms and Change in Length Varied Widely Across States

Probation lengths and rate by state, 2000 and 2018

Rank (1=longest)	State	Average probation term in months, 2018	Average probation term in months, 2000	Percentage change in average probation term, 2000 - 2018	Probation rate for adults, 2018
1	Hawaii	59	31	92%	1 in 55
2	New Jersey	52	26	105%	1 in 53
3	Rhode Island	44	41	7%	1 in 42
4	Oklahoma	42	31	38%	1 in 72
5	Arkansas	41	29	44%	1 in 63
6	New York	41	64	-35%	1 in 164
7	Alabama	40	28	45%	1 in 75
8	Arizona	39	21	84%	1 in 73
9	Kentucky	34	17	107%	1 in 74
10	Mississippi	34	31	11%	1 in 84
11	Tennessee	33	18	87%	1 in 86
12	Nevada	33	33	0.3%	1 in 179
13	Texas	33	26	26%	1 in 58
14	Idaho	29	14	109%	1 in 38
15	Montana	28	24	15%	1 in 84

37	California	19	27	-28%	1 in 146
38	Michigan	19	17	12%	1 in 52
39	Vermont	19	19	-4%	1 in 130
40	North Dakota	18	20	-8%	1 in 96
41	Colorado	17	24	-29%	1 in 56
42	Oregon	17	33	-49%	1 in 93
43	Florida	17	15	13%	1 in 84
44	Nebraska	16	21	-23%	1 in 98
45	Illinois	16	28	-44%	1 in 111
46	Indiana	15	15	5%	1 in 46
47	Delaware	15	21	-25%	1 in 54
48	West Virginia	15	24	-39%	1 in 218
49	Massachusetts	10	14	-27%	1 in 106
50	Kansas	9	9	3%	1 in 134

Note: Average probation terms are rounded to nearest month; percentage changes were calculated using unrounded figures.

Sources: Bureau of Justice Statistics, "Annual Probation Survey and Annual Parole Survey" (2000-2018)

© 2020 The Pew Charitable Trusts

Nine of the 10 states with the longest probation lengths in 2018 increased their average probation terms from 2000, while 9 of the 10 states with the shortest lengths in 2018 either shortened or approximately maintained their average term since 2000. In the 28

where populations were higher in 2018 than in 2000, about three-fourths (20) also had longer term lengths, and in 12 of these states, those population increases occurred despite declining admissions. (See Appendix Table A.1 for state-level data.)

This data shows that cutting the length of supervision can play an important role in shrinking probation populations. And reducing the number of people on supervision can allow agencies to direct resources where they can have the biggest impact on public safety. For example, research has shown that when officers have smaller caseloads and implement evidence-based practices, it can reduce recidivism.[10]

The causes of growth or decline in states' probation term lengths are complex. New judges may have different judicial philosophies than their predecessors about appropriate probation sentence length, how to address technical violations, and whether to grant early discharge. State reform efforts may change the offenses that are eligible for probation, policies that enable people to earn time off their probation for compliance, or limits on the circumstances under which someone's supervision could be revoked. Supervision agencies may adopt revised rules that curtail or extend supervision, or patterns of offending may shift in a given state. In any given state, multiple factors probably interact, but an analysis of those dynamics is beyond the scope of this study.

Data limitations leave unanswered questions

Notably, BJS' figures lack sufficient detail to fully illuminate the length of probation in the states. For instance, when terms are viewed in the aggregate, large numbers of people with short probation terms—those of less than a year—could obscure the smaller number who remain on probation for decades.[11] Further, because the statistics do not break out probation lengths by successful or unsuccessful completion, they do not reveal whether a drop in a state's average term length is the result of reforms that allow people who remain crime-free to be safely released early or of high rates of violations leading to early termination of supervision and incarceration.

Aggregate data also does not show the significant variability in probation length across and even within jurisdictions. People may spend different amounts of time on probation for the same offense based on their locations, the judges who sentence them, or the supervising agencies' practices. For example, a study in Minnesota found that two districts in the state had average probation terms for felony drug offenses of three years and nine years, respectively, but such differences are not evident in state averages.[12]

criminal history across several years. Further, data from the first year of observation shows that average probation term lengths in both states (24 months in Oregon and 26.2 months in South Carolina) were close to the 2018 national average of 22.4 months. (See the appendix for more information.) Because most re-offending occurs early in supervision, the researchers confined the study to people who had completed a year of their probation terms without being arrested—and so would be good candidates for shorter terms—and investigated whether these individuals could have served less time on supervision without jeopardizing public safety.

The Maxarth researchers created a statistical profile of each person using data points such as criminal history and age that are known to be linked to re-offending. The information that Maxarth examined included individuals' criminal histories before supervision and for at least three years after starting probation, as well as demographics, risk assessment scores, and discharge information.

The researchers matched people who had been discharged from probation with individuals with similar profiles who were still on probation and used those matches to compare recidivism outcomes, as measured by re-arrests, at 12, 18, 24, and 30 months from the start of probation. They then used that information to determine how many people could have served a shorter term of probation and how much less time they could have spent under supervision.

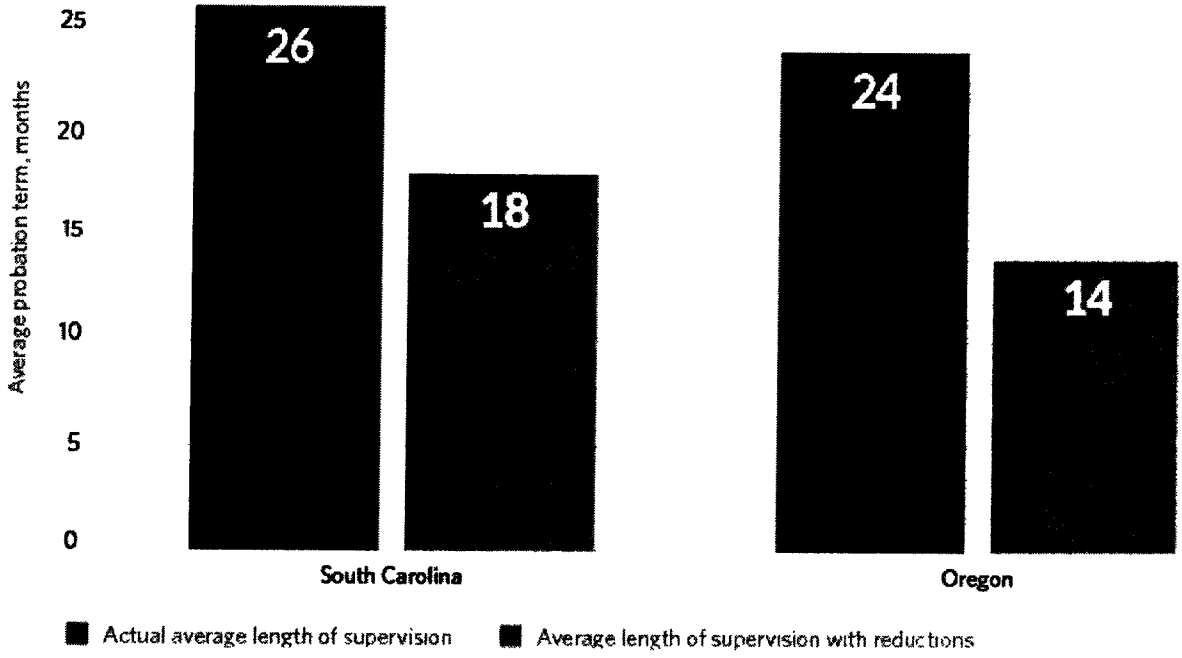
Most people who were arrest-free for their first year on probation could have safely spent less time on supervision

The analysis found that in both states, 9 in 10 people who completed their first year on probation without being arrested could have spent at least three fewer months under supervision than they actually did with no negative impact on recidivism, and many could have served much less time.[17] More than half (53%) of people on probation in the study in Oregon and about 3 in 5 (61%) of those in South Carolina could have served terms that were shorter by a year or more. (See Figure 3.) And these results were not confined only to people convicted of low-level offenses.

Figure 4

Average Length of Supervision in Oregon and South Carolina Could Have Been Safely Reduced by Shortening Some Probation Terms

Change in average probation length if individuals who were arrest-free for their first year on probation served less time, in months



Source: Analysis by Maxarth LLC of data from: the South Carolina Department of Probation, Parole and Pardon Services, 2009-13; South Carolina State Law Enforcement Division; Oregon Department of Corrections, 2010-14; and Oregon Criminal Justice Commission

© 2020 The Pew Charitable Trusts

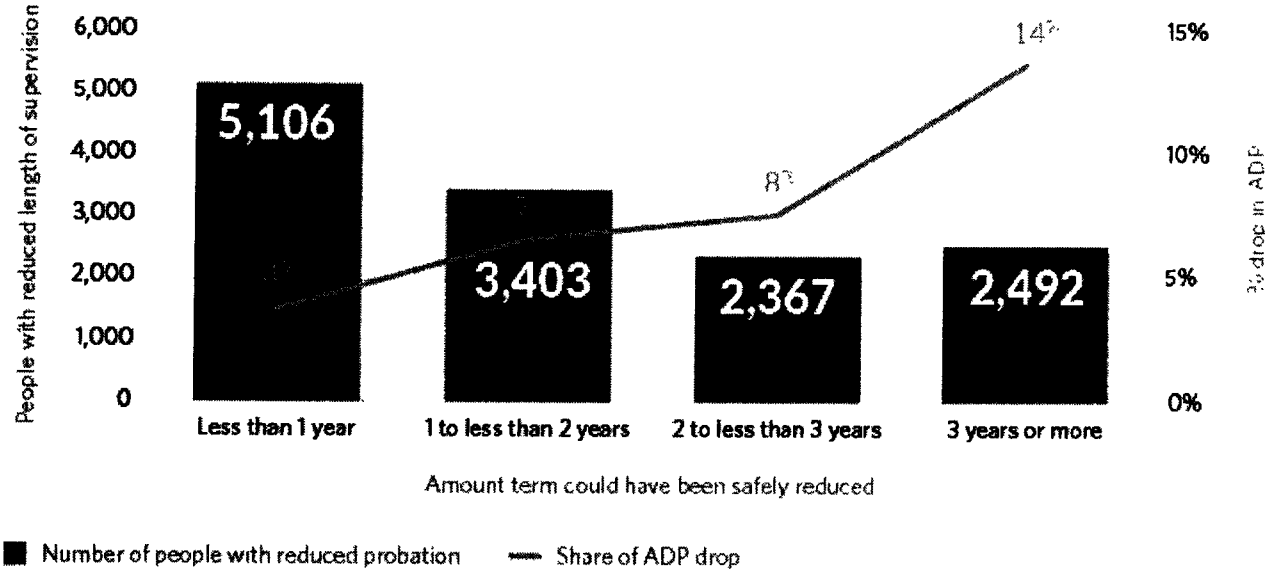
Shortening time on supervision would have also reduced states' probation ADP. South Carolina's ADP during the study period was approximately 14,719 people, but this analysis suggests that figure could have been reduced by about 32% to 10,071 without increasing recidivism. Similarly, the ADP in Oregon was about 24,323 but could have been reduced to 13,697, approximately a 44% decrease. (See Figure 5.)

Figure 6

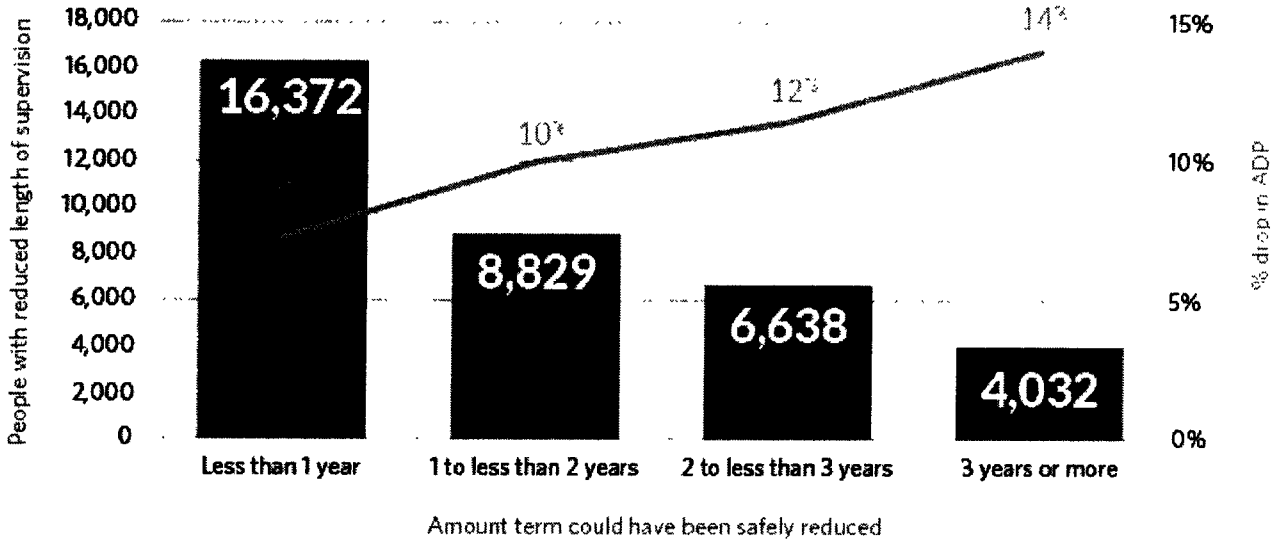
ADP Declines Would Be Driven by People Whose Terms Could Have Been Reduced by 3 Years or More

Percentage drop in average daily population, by group and simulated reduction in probation length

South Carolina

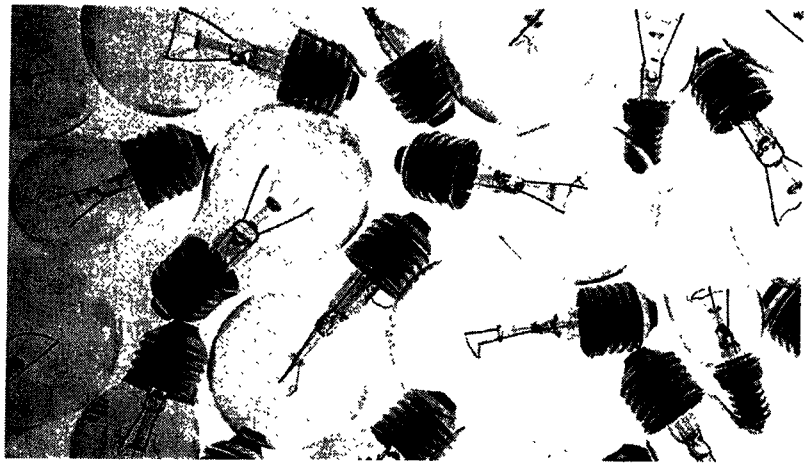


Oregon



Sources: Maxarth and Pew analysis of data from: the South Carolina Department of Probation, Parole and Pardon Services, 2009-13; South Carolina State Law Enforcement Division; Oregon Department of Corrections, 2010-14; and Oregon Criminal Justice Commission

© 2020 The Pew Charitable Trusts



States of Innovation

Table 2

Low Maximum Probation Terms and Early Discharge Mechanisms DoNot Always Reflect States' Time on Supervision Rankings

Provisions governing probation length and release, by state

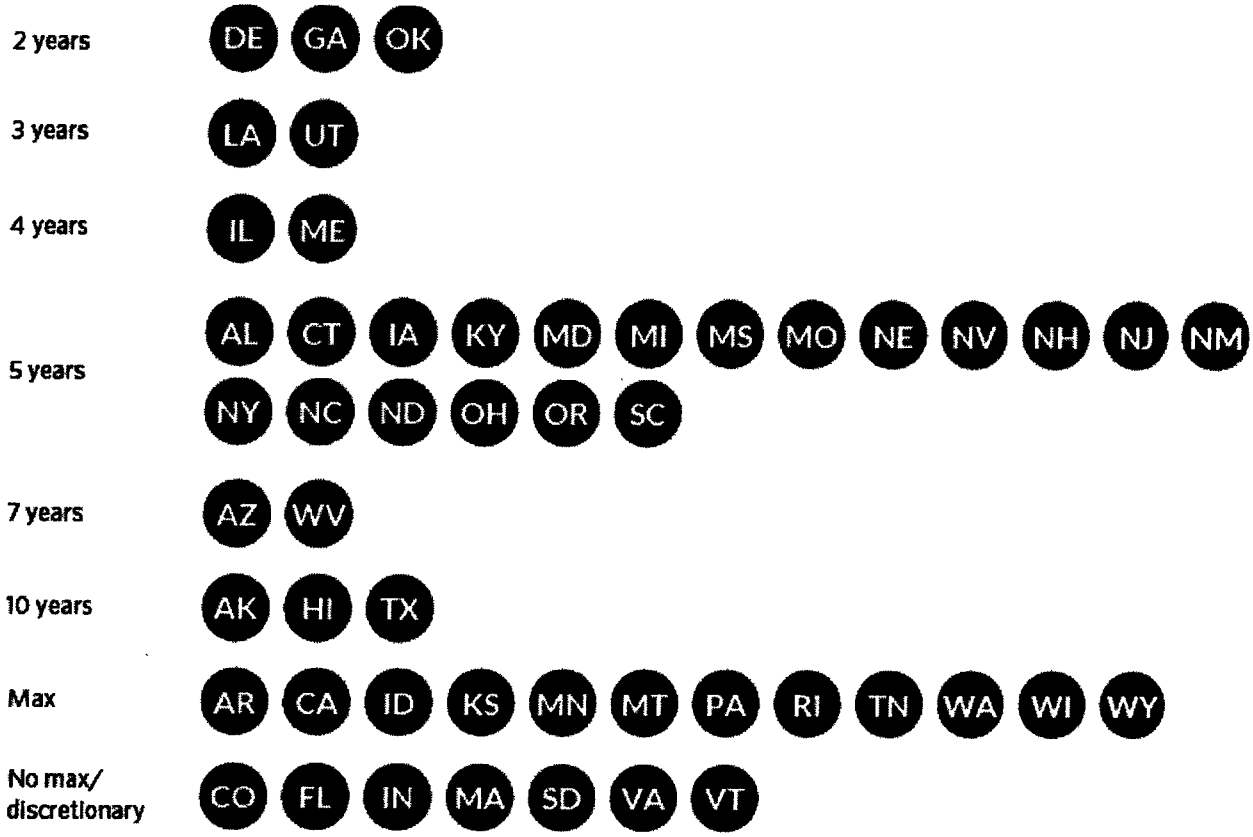
State	Rank	Misdemeanor	Felony	Earned time credit	Mandated review for early discharge	Court authority to terminate
Hawaii	1	2	10			X
New Jersey	2	5	5			X
Rhode Island	3	Max	Max			
Oklahoma	4	2	2			
Arkansas	5	Max	Max	X		X
New York	6	3	5			X
Alabama	7	2	5			X

Alaska	30	3	10	X	X	X
Connecticut	31	3	5		X	X
Ohio	32	5	5			X
Washington	33	Max	Max			X
New Hampshire	34	2	5			X
Georgia	35	2	2			X
North Carolina	36	5	5			X
California	37	Max	Max			X
Michigan	38	2	5			X
Vermont	39	None	None			X
North Dakota	40	2	5			X
Colorado	41	5	None			X
Oregon	42	5	5	X		X
Florida	43	None	None			X
Nebraska	44	5	5			X
Illinois	45	2	4	X		X
Indiana	46	1	None	X		X
Delaware	47	1	2	X		X
West Virginia	48	7	7			X
Massachusetts	49	None	None			
Kansas	50	2	Max		X	X

Figure 7

Almost Half the States Allow Felony Probation Lengths of 5 or More Years

Maximum term, by state



Note: "Max" means the probation term cannot exceed the statutory maximum sentence of incarceration for the same crime.

Source: National Conference of State Legislatures, 50 State Review of 2017 Statutes

© 2020 The Pew Charitable Trusts

Maximum misdemeanor probation lengths

Forty-five states had statutory maximums for misdemeanor probation. (See Figure 8.) Sixteen had a two-year maximum;[19] nine states had a five-year maximum, and in another nine, the length could not exceed the maximum statutory sentence of incarceration for the same offense. The remaining 11 states had one-, three-, six-, and seven-year maximums for misdemeanors.

maximum, sometimes up to the statutory sentence of incarceration for the same offense (which can be longer than the maximum probation term); one such state is Oklahoma, where the maximum felony probation term is two years, but the average length of time on probation is three because terms can be extended up to the maximum statutory sentence for the underlying offense.[23] In some states, probation can be extended indefinitely under certain circumstances, which commonly include failure to pay restitution or child support.[24]

Early discharge offers opportunity to shorten probation terms

NCSL also reviewed statutes relating to early termination of probation. Early discharge, sometimes referred to as early termination or early release, is an incentive offered to people to promote compliance with the rules and provisions of supervision that supports and encourages behavior change while reducing caseloads so probation agencies can concentrate their resources on individuals at higher risk of re-offending. This analysis included statutes that provide for the court's authority to discharge people from probation early, petitions or recommendations for early termination, earned time credits, and automatic or mandated review for early discharge. (See Figure 9.)

In Montana, reviews are scheduled based on an individual's risk and needs.[28] A conditional discharge review is conducted at nine months for people at low risk to re-offend, 12 months for medium risk, 18 months for moderate risk, and 24 months for high risk.

Petition or recommendation for early discharge

Twenty-two states have statutes that allow a designated entity to submit a petition or recommendation to the court to have an individual's probation terminated early, but who can initiate this action varies by state. In 21 states, the department of corrections or the probation department, supervisor, or officer can petition the court for early termination, though some of these states require that the individual first complete a specified amount of time on probation. For example, in Michigan, people convicted of felonies must serve half of their probationary periods before they can be recommended for early termination.[29] In addition, some states, including New Mexico, New York, and Ohio, allow local governments to adopt their own policies allowing probation officers to recommend early termination.

Further, in 10 states, people on probation can petition for their own early termination. In Colorado this applies only to people convicted of impaired driving, whereas in Idaho anyone on probation can request termination at any time.[30] New York and Ohio also permit local governments to enact policies allowing individuals on probation to petition for early termination. In Rhode Island, the probation department can give certificates to people who have been on probation for three years, had no technical violations, and completed all obligations, including paying restitution and fines, and those individuals can then present the certificate to the superior court for consideration of early termination.[31] It is not clear how often these statutory early discharge mechanisms are used.

Mandated review for early discharge

Ten states have statutes requiring corrections authorities to periodically review individuals' eligibility and readiness for early discharge for probation. In several states—Alabama, Alaska, Connecticut, Kansas (if low-risk), Kentucky, and Texas (after half of the sentence or two years of supervision, whichever is more)—these evaluations generally occur after one to two years on probation, but state provisions vary and some offenses are excluded.[32] In North Carolina, individuals sentenced to more than three years of probation are subject to a mandatory review at the three-year point.[33]

for earned time or early discharge via judicial review, most have felony maximum terms, and almost all provide the court with the authority to terminate probation.

This finding suggests that reducing statutory maximums and allowing early termination alone may not reduce probation terms, particularly if state law has exceptions to maximum terms that keep many people on probation longer. For example, a study in Maricopa County, Arizona, found that although the state's credit policy enabled certain individuals on probation to earn credit at a rate of 20 days for every 30 days in compliance, the requirement that people stay current with financial obligations, including court-ordered fees, restitution, fines, and surcharges, was preventing some people from being discharged.[40]

On the other hand, an evaluation of Missouri's 30 for 30 earned time policy found that it effectively reduced the state's supervision population and officer caseloads, cutting supervision terms by 14 months on average without negatively affecting recidivism.[41]

Discretion

A key factor affecting the ways in which states implement probation length statutes is individual choice in decision-making. In some cases, discretion on the part of judges, prosecutors, and probation agencies can help shorten terms while protecting public safety by allowing decision-makers to consider each individual's circumstances and behavior while on probation. For example, in 2010 the New York City Department of Probation began actively recommending early termination for people on probation who met eligibility requirements, and as a result, the department went from discharging 3% of people through early discharge in 2007 to 17% in 2012.[42] Under this change, individuals discharged early had a lower felony re-arrest rate than those who stayed on probation for their full terms.[43]

However, discretion also leaves room for disparities between jurisdictions or even courtrooms.[44] Judicial or regional discretion can affect probation terms at various points, including initial sentencing, when a judge or probation officer sets the requirements for a person on supervision, when decisions are made about how to address supervision violations, and when considering or recommending early termination.

Recommendations

To be effective, probation systems should prioritize resources for the period during which a person is most at risk to re-offend, typically the first 12 to 18 months; employ policies and practices shown to reduce re-offending; and terminate supervision when additional probation will deliver no further public safety benefit. This approach can enable agencies to promote community safety, make the best use of limited public resources, and improve long-term outcomes for people on supervision.

Appendix A: Supplemental data

Table A.1

Percentage Change in Probation Population, Average Term Length, and Entries by State, 2000 and 2018

State	Percent change in population (in descending order)	Percent change in average term length	Percent change in probation entries
Kentucky	128%	107%	16%
North Dakota	119%	-8%	130%
Virginia	86%	56%	16%
Mississippi	81%	11%	11%
Colorado	71%	-29%	155%
Montana	64%	15%	54%
Tennessee	50%	87%	-18%

West Virginia	9%	-39%	86%
Nevada	9%	0%	-5%
New Hampshire	8%	30%	-18%
Indiana	4%	5%	-2%
Kansas	3%	3%	0%
New Jersey	1%	105%	-63%
Idaho	-2%	109%	-48%
Louisiana	-2%	-22%	-2%
Rhode Island	-11%	7%	-45%
Missouri	-12%	-15%	15%
Minnesota	-13%	46%	-39%
Maine	-13%	81%	-48%
Michigan	-13%	12%	-26%
Maryland	-16%	7%	-27%

Vermont	-58%	-4%	-59%

Note: Data is for 2000 and 2018 and does not consider impacts of fluctuations in admissions and length of stay in intervening years.

Sources: Bureau of Justice Statistics, "Annual Probation Survey and Annual Parole Survey" (2000-2018)

© 2020 The Pew Charitable Trusts

Appendix B: Methodology

Much of the data in this report comes from the federal Bureau of Justice Statistics' Annual Probation and Annual Parole surveys, which are the only community corrections dataset covering all 50 states, the District of Columbia, and the federal system. The 2018 survey was sent to 454 agencies, including 40 "central" state and Washington, D.C., agencies; 415 "separate" state, county, or court agencies; and the federal system.[46] Federal and District data was not used in this analysis.

Some data issues do exist, including changes in reporting methods from year to year and state to state; differences in the handling of people with multiple concurrent probation sentences; varied approaches to counting people who enter and exit probation more than once a year; missing data; and inconsistencies across states regarding inclusion of supervision programs such as drug courts, administrative caseloads, or private supervision in their probation numbers.

The probation-lengths analysis calculated the mean length of time on probation as the inverse of the exit rate. Because of the small growth rate in probation in recent years, this method yields sufficient estimates.[47] BJS indicates that, given a relatively "stationary" population and small growth rate, the inverse of the exit rate performs well compared with other methods.[48]

Oregon and South Carolina propensity score matching

The states' probation population compositions differed somewhat: Oregon had a higher

Risk level	Low	34%	62%
	Moderate	23%	N.A.
	High	17%	32%
	Unavailable	26%	6%
Probation exits	Positive/success	56%	70%
	Negative/failure	33%	21%
	Other/censored	11%	9%

Note: Data is for 2000 and 2018 and does not consider impacts of fluctuations in admissions and length of stay in intervening years.

Source: Analysis by Maxarth LLC of data from: the South Carolina Department of Probation, Parole and Pardon Services, 2009-13; South Carolina State Law Enforcement Division; Oregon Department of Corrections, 2010-14; and Oregon Criminal Justice Commission

© 2020 The Pew Charitable Trusts

The propensity score models included attributes related to recidivism as measured by re-arrest so that the groups were balanced on relevant features (sex, race, current charge category, current charge class, risk level, criminal history, and sentence imposed on controlling charge). A propensity score (the output from a logistic regression model) was computed for each individual. Then, the closest matching sample member from the opposite group was matched to each member in the treatment group; that is, the group that is still being supervised.

Because those serving longer probation terms constituted the treatment group, the propensity scores were used to find individuals who have served shorter probation terms but were otherwise similar in every other respect. The individuals in the control group—

control sample) or made things worse (i.e., the outcome under further supervision was worse than if the person had been discharged earlier).

The actual early discharge date is harder to infer from this analysis and probably depends on additional state-specific factors. For purposes of conducting simulations, however, the cut-point was used as the early discharge date for all eligible individuals. Moreover, the earliest discharge date was selected if an individual qualified for more than one such date. For example, if an individual qualified for early discharge using both the 24-month and 18-month cut-points, then the early discharge date was set at the end of 18 months post-intake.

Endnotes

1. D. Kaeble, "Probation and Parole in the United States, 2017-18" (Bureau of Justice Statistics, 2020), https://www.bjs.gov/content/pub/pdf/ppus1718.pdf. The total population on supervision in the U.S. at the end of 2018 was approximately 4.4 million, with about 900,000 people on parole or other forms of post-release supervision.
2. The Pew Charitable Trusts, "Probation and Parole Systems Marked by High Stakes, Missed Opportunities: 1 in 55 Adults Is Under Community Supervision" (2018), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities.
3. M.S. Phelps, "Mass Probation: Toward a More Robust Theory of State Variation in Punishment," *Punishment & Society* 19, no. 1 (2017): 53-73, https://journals.sagepub.com/doi/abs/10.1177/1462474516649174.
4. M.W. Lipsey, "Rehabilitation Programs for Adult Offenders: A Meta-Analysis in Support of Guidelines for Effective Practice" (National Criminal Justice Reference Service, 2019), https://www.ncjrs.gov/pdffiles1/nij/grants/252504.pdf.
5. J. Austin, "Reducing America's Correctional Populations: A Strategic Plan," *Justice Research and Policy* 12, no. 1 (2010): 9-40, https://journals.sagepub.com/doi/abs/10.3818/JRP.12.1.2010.9; National Research Council, "Parole, Desistance From Crime, and Community Integration" (2008), https://www.nap.edu/catalog/11988/parole-desistance-from-crime-and-

E.M. Kerrison, and B.S. Da Silveira, "Examining Racial Disparities in Criminal Case Outcomes Among Indigent Defendants in San Francisco" (2017), https://www.law.upenn.edu/live/files/6792-examining-racial-disparities-may-2017-summary.

14. Mitchell, "Rethink Probation Lengths."

15. Ibid.

16. K.D. Morgan, "Factors Associated With Probation Outcome," *Journal of Criminal Justice* 22, no. 4 (1994): 341-53, https://www.sciencedirect.com/science/article/pii/0047235294900817; D.E. Olson and A.J. Lurigio, "Predicting Probation Outcomes: Factors Associated With Probation Rearrest, Revocations, and Technical Violations During Supervision," *Justice Research and Policy* 2, no. 1 (2000): 73-86, https://journals.sagepub.com/doi/abs/10.3818/JRP.2.1.2000.73; B. Sims and M. Jones, "Predicting Success or Failure on Probation: Factors Associated With Felony Probation Outcomes," *Crime & Delinquency* 43, no. 3 (1997): 314-27, https://journals.sagepub.com/doi/abs/10.1177/0011128797043003005; The Council of State Governments, "Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets" (2019), https://csgjusticecenter.org/publications/confined-costly/.

17. This analysis did not explore potential probation term reductions for people with arrests in the first year of supervision, but at least some individuals in this group likely could also have had their terms reduced.

18. In some states, statutes concerning maximum probation terms exclude certain offenses, such as sex offenses, effectively allowing much longer maximums, including life probation terms. For example, in New York certain drug felonies have a lifetime probation maximum, and terms for sex offenses that were excluded from the statutory review ranged from 10 years to life. Statutes are current as of the end of the 2017 legislative sessions.

19. Wisconsin Stat. 973.09(2)(a)2, https://docs.legis.wisconsin.gov/statutes/statutes/973/09/2/a. The two-year maximum sentence can be increased if an individual is convicted of multiple offenses.

https://leg.mt.gov/bills/mca/title_0460/chapter_0230/part_0100/section_0110/0460-0230-0100-0110.html; Rodriguez and Webb, "Probation Violations, Revocations, and Imprisonment."

29. Michigan Comp. Laws § 771.2, http://www.legislature.mi.gov/(S(u40cehaecp4srr0apj1a5rtz))/mileg.aspx?page=GetObject&objectname=mcl-771-2.

30. Colorado Rev. Stat. 42-4-1307(7), https://codes.findlaw.com/co/title-42-vehicles-and-traffic/co-rev-st-sect-42-4-1307.html; United States Courts, "Post-Conviction Supervision—Judicial Business 2018," accessed June 26, 2019, https://www.uscourts.gov/statistics-reports/post-conviction-supervision-judicial-business-2018; T.C. Pratt, "A Self-Control/Life-Course Theory of Criminal Behavior," *European Journal of Criminology* 13, no. 1 (2015): 129-46, https://doi.org/10.1177/1477370815587771.

31. Rhode Island Superior Court Rules, Early Termination of Probation and Parole, 35©, http://www.doc.ri.gov/community-corrections/probation-parole/early-termination.php.

32. Alabama Code § 15-22-54(B), http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/15-22-54.htm; Alaska Stat. 12.55.090(G) (2019), http://www.akleg.gov/basis/statutes.asp#12.55.090; Connecticut Gen. Stat. § 53a-29(G), https://www.cga.ct.gov/current/pub/chap_952.htm#sec_53a-29; Kansas Stat. § 21-6608 (D), https://www.ksrevisor.org/statutes/chapters/ch21/021_066_0008.html; Kentucky Rev. Stat. § 439.552, https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=39574; Texas CCP, Art. 42a.701 (B), https://statutes.capitol.texas.gov/Docs/CR/htm/CR.42A.htm.

33. North Carolina Gen. Stat. § 15a-1342 (D), https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_15A/GS_15A-1342.html.

34. The Pew Charitable Trusts, "Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety" (2016), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/missouri-policy-shortens-probation-and-parole-terms-protects-public-safety; E.J. Wodahl, B.E. Garland, and T.J. Mowen,

the offense, in Indiana, an individual could also earn good time credit for time confined while awaiting trial or sentencing or for time served on pretrial home detention (Ind. Code § 35-50-6-3.1.).

39. Maryland Code, Correctional Services, § 6-117.

40. Arizona Rev. Stat. § 13-924; M.L. Griffin, J.R. Hepburn, and K. Ginsburg, "The Effects of Earned Time Credit on Successful Probation Outcomes: An Evaluation of Maricopa County, Arizona's Experience" (2013).

41. The Pew Charitable Trusts, "Missouri Policy Shortens Probation and Parole Terms."

42. M.P. Jacobson et al., "Less Is More: How Reducing Probation Populations Can Improve Outcomes" (Harvard Kennedy School, (2017), https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/executive-sessions/executive-session-on-community-corrections/publications/less-is-more-how-reducing-probation-populations-can-improve-outcomes.

43. Ibid.

44. M. Jones and J.J. Kerbs, "Probation and Parole Officers and Discretionary Decision-Making: Response to Technical and Criminal Violations," *Federal Probation* 71, no. 1 (2007), https://www.uscourts.gov/federal-probation-journal/2007/06/probation-and-paroleofficers-and-discretionary-decision-making.

45. S. Torres, "Early Termination: Outdated Concept in an Era of Punitiveness," *Federal Probation* 63, no. 1 (1999): 35-41, https://www.uscourts.gov/federal-probation-journal/1999/06/early-termination-outdated-concept-era-punitiveness; J.J. Norris, "The Earned Release Revolution: Early Assessments and State-Level Strategies," *Marquette Law Review* 95 (2011): 1551, https://scholarship.law.marquette.edu/mulr/vol95/iss4/15/.

46. D. Kaeble, "Probation and Parole in the United States, 2017-2018" (Bureau of Justice Statistics, 2020), https://www.bjs.gov/content/pub/pdf/ppus1718.pdf.

47. Patterson and Preston, "Estimating Mean Length of Stay"; E.J. Herberman and T.P. Bonczar, "Probation and Parole in the United States, 2013" (Bureau of Justice Statistics, 2015), https://www.bjs.gov/content/pub/pdf/ppus13.pdf.

48. E.J. Herberman and T.P. Bonczar, "Probation and Parole in the United States, 2013"

SENATE JUDICIARY
Exhibit No. 11
Date: 4/9/21
Bill No. HB 553

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; ~~PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES;~~ AMENDING ~~SECTIONS~~ SECTION 46-18-201 ~~AND 46-18-208~~, MCA; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE~~ APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(b) (i) AExcept as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner

that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

~~(i)~~(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

~~(ii)~~(C) 15 years for a violent offender, as defined in 46-23-502, and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106;

~~(iii)~~(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

~~(iv)~~(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-

503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the

offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

~~**Section 2.** Section 46-18-208, MCA, is amended to read:~~

~~"**46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the sentence if:~~

~~(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or~~

~~(b) in the case of a suspended sentence:~~

~~(i) the defendant was sentenced prior to [the effective date of this act], has served more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's offense, and has demonstrated compliance with supervision requirements; or~~

~~(i)(ii) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and~~

~~(ii)(iii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.~~

~~(2) The motion must set forth the following:~~

~~(a) why the defendant meets the time limitations provided in subsection (1); and~~

~~(b) how the defendant has demonstrated compliance with supervision requirements.~~

~~(3) The motion must be served on the county attorney serving in the county of the presiding district court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform District Court Rules.~~

~~(4) The department of corrections shall make reasonable efforts to notify the victim if required by 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided the following information:~~

~~(a) a copy of the motion;~~

~~(b) written notice that:~~

~~(i) the victim may provide written input regarding the motion or may ask the county attorney to state the victim's position on the motion;~~

~~(ii) if a hearing is set, the date, time, and place of the hearing; and~~

~~(iii) the victim may appear and testify at any hearing held on the motion.~~

~~(5) The court may hold a hearing on its own motion and may consider a hearing request from the county attorney or defendant.~~

~~(6) If~~ Except as provided in subsection (7), if ~~the~~ court requires a hearing on the motion, the court may ~~grant the motion if it finds that:~~

~~(a) termination of the remainder of the sentence is in the best interests of the defendant and society;~~

~~(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and~~

~~(c) the defendant has paid all restitution and court-ordered financial obligations in full.~~

~~(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this act] and~~ meets the conditions in subsection (1)(b)(i)."

NEW SECTION. ~~**Section 3. Effective date.** [This act] is effective on passage and approval.~~

~~NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to sentences that were imposed prior to [the effective date of this act] when the suspended portion of an offender's sentence has resulted in the offender serving more time on supervision by the department of corrections than the limits of 46-18-201(2)(b) allow.~~

NEW SECTION. **Section 2.** {standard} **Saving clause**. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

COORDINATION SECTION. **Section 3. Coordination instruction**. If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:

"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);"

NEW SECTION. **Section 4. Applicability**. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton SHamilton@mt.gov

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Friday, April 9, 2021 **Time:** 8:00 AM
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

HB 553 - Limit time of suspended sentences for felony convictions - Rep. Jimmy Patelis (R)
HB 559 - Revise requirements for dissemination of confidential criminal justice info - Rep. Bill Mercer (R)
HB 602 - Require warrant for search of consumer DNA database - Rep. Mallerie Stromswold (R)
SR 97 - Senate resolution authorizing intervention in SB 140 legal proceedings - Sen. Cary Smith (R)

EXECUTIVE ACTION TAKEN:

SR 97 - Be Adopted
HB 358 - Be Concurred In as Amended
HB 436 - Tabled
HB 517 - Be Concurred In
HB 519 - Tabled
HB 537 - Be Concurred In as Amended
HB 578 - Be Concurred In
HB 230 - Be Concurred In as Amended
HB 553 - Be Concurred In as Amended
HB 559 - Be Concurred In as Amended
HB 481 - Be Concurred In as Amended

Comments:

SEN. Keith Regier, Chair

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: April 9, 2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR MCGILLVRAY	✓	
VICE CHAIR SANDS	✓	
SEN. ESP	✓	
SEN. HINEBAUCH	✓	
SEN. BENNETT		✓
SEN. MANZELLA	✓	
SEN. WEBBER	✓	
SEN. BROWN	✓	
SEN. FRIEDEL	✓	
SEN. GROSS	✓	
CHAIRMAN REGIER	✓	
11 Committee Members		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Resolution 97** (first reading copy -- white) **be adopted**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required _X_

SR0097001SC.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 358** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator John Esp

And, that such amendments read:

1. Page 2, line 6.
Following: "through"
Strike: "6"
Insert: "4"

2. Page 2, line 8.
Strike: "government"
Insert: "governmental"

3. Page 2, line 9.
Following: "COMPENSATION"
Strike: "damages"

4. Page 3, line 10.
Following: "of the"
Insert: "alleged"

5. Page 3, line 21.
Following: "(5)"
Insert: "(a)"

6. Page 3, line 23.
Following: "know."
Insert:"(b)"

7. Page 3, line 24.
Following: "(1)(E)"
Strike: "."
Insert: ", except in the rare instance in which:
(i) disclosure of information required to be reported by subsection (1)(c)

Committee Vote:
Yes 11, No 0
Fiscal Note Required X

HB0358001SC12900.slk

or (1)(e) would lead to a violation of an individual's right to privacy; and
(ii) the right to privacy arising as a result of the claim outweighs the public right to know.
(c) No privacy interest may overcome the public right to know with respect to the duty to report the information in subsections (1)(b) and (1)(d)."

8. Page 3, line 28.
Strike: "PURSUANT TO 2-9-303(1)(B)"
Insert: "when monetary compensation is utilized to settle or compromise claims"

9. Page 3, line 28 through page 4, line 1.
Following: "DOCUMENTS" on page 3, line 28
Strike: "FROM THE" on page 3, line 28 through "STATE" on page 4, line 1
Insert: "signed by an appropriate official, including"

10. Page 4, line 2.
Strike: "CERTIFYING"
Insert: "a statement"

11. Page 4, line 4.
Strike: "DESCRIBING"
Insert: "a detailed description of"
Following: "THE"
Insert: "alleged"

12. Page 4, line 5 through line 6.
Strike: "AND" on line 5 through "SETTLE" on line 6
Insert: ", and the state's defenses, including legal and factual defenses at issue in"

13. Page 4, line 13 through line 14.
Strike: "agency" on line 13 through "attached" on line 14
Insert: "governmental"

14. Page 4, line 14.
Strike: "capturing:"

15. Page 4, line 15 through line 21.
Strike: "(A)" on line 15 through "filed" on line 21
Insert: "disclosing all civil claims or complaints, including the identity of the court or entity of the state where the complaint is filed, received by or for which service of process has been perfected with initial demands seeking $10,000 or more in monetary compensation, exclusive of initial demands made in mediations or settlement conferences in which court rules or orders preclude disclosure of demands"

16. Page 4, line 22.
Strike: "SUBSECTION (1)(B)"
Insert: "this section"

17. Page 4.
Following: line 23
Insert: "(3) Claims for injunctive relief need not be reported as claims seeking monetary compensation.
(4) Demands deemed to be frivolous by governmental entities need not be reported under this section, and judicial review is not available to challenge any such determination made by a governmental entity. If a governmental entity does not disclose a claim or complaint in a quarterly report because the claim is deemed to be frivolous, the governmental entity shall disclose the number of claims or complaints not disclosed under the exemption in this subsection."

18. Page 5, line 9 through line 10.
Strike: "that" on line 9 through "beneficial" on line 10
Insert: "at issue"

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 517** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Keith Regier

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required X

HB0517001SC13689.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 537** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Chris Friedel

And, that such amendments read:

1. Page 1.
Following: line 21
Insert: "**Section 2.** Section 2-4-702, MCA, is amended to read:

"**2-4-702. (Temporary) Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute ~~or~~, subsection (2)(d), or subsection (2)(e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the

Committee Vote:
Yes 7, No 4
Fiscal Note Required X

HB0537001SC19696.slk

petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction._

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases. (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of

this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.""

Renumber: subsequent sections

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 578** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Tom McGillvray

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required __

HB0578001SC12922.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 230** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Keith Regier

And, that such amendments read:

1. Title, line 12.
Following: "DECLARATION;"
Insert: "PROVIDING FOR A CONTINUED STATE OF EMERGENCY OR DISASTER FOR A DROUGHT, EARTHQUAKE, FLOOD, OR WILDFIRE; PROHIBITING DISCRIMINATORY ACTION BY THE GOVERNMENT; PROVIDING FOR CIVIL RELIEF; PROHIBITING A GOVERNOR FROM SUSPENDING A STATUTE THAT AFFECTS THE EXERCISE OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS; LIMITING THE ABILITY TO INTERFERE WITH THE COLLECTION OF RENT OR WITH ACTIONS FOR TERMINATION AND POSSESSION;"

2. Title, line 14.
Following: "DISASTER;"
Insert: "PROVIDING DEFINITIONS;"

3. Page 3.
Following: line 2
Insert: "NEW SECTION. **Section 2. Claim or defense against state action -- remedies -- limitations.** (1) A religious organization may assert a violation of 10-3-102 or [section 3] as a claim against a state, local, or interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any judicial proceeding.

(2) In any civil action based on this section, the court may grant:

(a) declaratory relief;

(b) injunctive relief;

Committee Vote:
Yes 7, No 4
Fiscal Note Required __

HB0230001SC13689.slk

(c) compensatory damages for pecuniary and nonpecuniary losses;

(d) reasonable attorney fees and costs; and

(e) any other appropriate relief.

(3) A religious organization may not bring an action to assert a claim under this section later than 2 years after the date that it knew or could have known that a discriminatory action or other violation occurred."

Insert: "NEW SECTION. **Section 3. Protections against government discrimination.** An agency or a political subdivision of the state may not take discriminatory action against a religious organization wholly or partially on the basis that the organization is religious, operates or seeks to operate during an emergency or disaster, or engages in the exercise of religion as protected under the first amendment to the United States constitution. Discriminatory action means to:

(1) alter in any way the tax treatment of a religious organization, or cause any tax, fine, civil or criminal penalty, payment, damages award, or injunction to be assessed against a religious organization;

(2) deny, delay, revoke, or otherwise make unavailable an exemption from taxation for a religious organization; or

(3) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any grant, contract, scholarship, license, accreditation, certification, entitlement, or other benefit under any government program."

Renumber: subsequent sections

4. Page 5, line 16.
Following: "services;"
Strike: "and"

5. Page 5, line 20.
Following: "declarations"
Insert: "; and
(11) ensure the continuity of religious services as essential services to the welfare of the people of the state"

6. Page 6, line 4.
Following: "at"
Insert: "a religious service"

7. Page 6, line 5.

Strike: "facility, church, synagogue, or other place of worship"
Insert: "organization"

8. Page 6, line 15.
Following: "chapter;"
Strike: "or"

9. Page 6, line 18.
Following: "chapter"
Insert: "; or
(6) except in areas evacuated or subject to control of ingress pursuant to 10-3-104, and for no more than 60 days without legislative approval, interfere with the collection of rent or with actions for termination and possession pursuant to Title 70, chapter 24, part 4, chapter 27, or chapter 33"

10. Page 8, line 1.
Following: page 7, line 28
Insert: "(12) "Religious organization" means:
(a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and temples; or
(b) a religious group, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.
(13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that involve the exercise of religion."
Renumber: subsequent subsections

11. Page 8, line 18.
Following: "(a)"
Insert: "except as provided in subsection (4),"

12. Page 8, line 18.
Strike: "any"
Insert: "a"

13. Page 9.
Following: line 1
Insert: "(4) The governor may not suspend a statute that affects the exercise of an individual's constitutional rights under the United States constitution or the Montana constitution, including 13-19-104(3), even if the statute is otherwise considered a regulatory statute prescribing the procedures for conduct of state business."

14. Page 9, line 21.
Following: "(3)"
Insert: "(a) Except as provided in subsection (3)(b), a"
Strike: "A"

15. Page 9.
Following: line 25
Insert: "(b) A state of emergency or disaster may continue for a drought, an earthquake, flooding, or a wildfire as long as continuing conditions of the state of emergency or disaster exist unless terminated by the declaration of the legislature by joint resolution of termination of the state of emergency or disaster."

16. Page 10, line 25.
Strike: "Section"
Insert: "Sections"

17. Page 10, line 25.
Following: "1"
Insert: "through 3"

18. Page 10, line 25.
Strike: "is"
Insert: "are"

19. Page 10, line 26.
Strike: "section"
Insert: "sections"

20. Page 10, line 26.
Following: the third "1"
Insert: "through 3"

21. Page 10.
Following: line 27
Insert: "COORDINATION SECTION. **Section 16. Coordination instruction.** (1) If both Senate Bill No. 172 and [this act] are passed and approved, then Senate Bill No. 172 is void.

(2) If both Senate Bill No. 173 and [this act] are passed and approved, then Senate Bill No. 173 is void.

(3) If both Senate Bill No. 185 and [this act] are passed and approved, then Senate Bill No. 185 is void."

Renumber: subsequent section

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 481** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Bob Brown

And, that such amendments read:

1. Page 1, line 25.
Following: "piping,"
Insert: "and"

2. Page 1, line 26.
Following: "facility"
Strike: ", and natural gas production facilities"

3. Page 2, line 15.
Following: "oil or"
Insert: "natural"

4. Page 3, line 6.
Strike: "or enters"
Insert: "on"

5. Page 3, line 7 through line 13.
Strike: subsections (a) and (b) in their entirety
Insert: "(a) that is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders with intent to willfully damage, destroy, vandalize, deface, tamper with equipment, or materially impede or inhibit operations of the facility shall, on conviction, be guilty of a felony punishable by a fine of not more than $4,500 or by imprisonment for not more than 18 months or both; and
(b) that is clearly marked with a sign or signs that are posted on the property that indicate that entry is forbidden without site authorization with intent to willfully damage, destroy, vandalize, deface, tamper with equipment, or materially impede or inhibit operations of the facility shall, on conviction, be guilty of a felony punishable by a fine of not more than $4,500 or by imprisonment for not more than 18 months or both."

Committee Vote:
Yes 7, No 4
Fiscal Note Required __

HB0481001SC16494.slk

6. Page 3, line 15 through line 16.
Following: "facility" on line 15
Strike: "shall" on line 15 through "both." on line 16
Insert: ":
(a) causing less than $1,500 in damages shall, on conviction, be guilty of a misdemeanor and may be incarcerated for any term not to exceed 6 months or be fined an amount not to exceed $500, or both, and must be ordered to make restitution in an amount and manner to be set by the court; and
(b) causing damages greater than $1,500 shall, on conviction, be guilty of a felony punishable by a fine of not more than $150,000 or by imprisonment for not more than 30 years, or both."

7. Page 3, line 17.
Strike: "a conspirator"
Insert: "in a conspiracy, as the term is used in 45-4-102,"

8. Page 3, line 18.
Strike: "shall"
Insert: "may"

9. Page 3, line 18.
Strike: "that is"
Insert: "up to"

10. Page 3, line 22.
Following: "facility"
Insert: "that is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or that is clearly marked with a sign or signs that are posted on the property that indicate that entry is forbidden without authorization, and enters with intent to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility"

11. Page 3, line 24.
Following: "that"
Insert: "directs a person to trespass as described in subsection (1),"

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 553** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Diane Sands

And, that such amendments read:

1. Title, line 5 through line 6.
Strike: "PROVIDING" on line 5 through "SENTENCES;" on line 6

2. Title, line 6.
Strike: "SECTIONS"
Insert: "SECTION"

3. Title, line 7.
Following: "46-18-201"
Strike: "AND 46-18-208"

4. Title, line 7 through line 8.
Strike: "IMMEDIATE" on line 7 through "RETROACTIVE" on line 8

5. Page 1, line 27.
Following: "(b)"
Insert: "(i)"

6. Page 1, line 27.
Strike: "A"
Insert: "Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a"

7. Page 1, line 28.
Following: "community"
Insert: "as a probationer"

8. Page 2, line 2.
Strike: "(i)"
Insert: "(A)"

Committee Vote:
Yes 11, No 0
Fiscal Note Required X

HB0553001SC13941.slk

9. Page 2.
Following: line 2
Insert: "(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;"

10. Page 2, line 3.
Strike: "(ii)"
Insert: "(C)"
Following: "46-23-502"
Insert: ", and for an offender convicted of negligent homicide, as defined in 45-5-104, or vehicular homicide while under the influence, as defined in 45-5-106"

11. Page 2, line 4.
Strike: "(iii)"
Insert: "(D)"

12. Page 2, line 6.
Strike: "(iv)"
Insert: "(E)"

13. Page 2.
Following: line 6
Insert: "(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.
(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000."

14. Page 5, line 4 through page 6, line 21.
Strike: sections 2 through 4 in their entirety
Insert: "NEW SECTION. **Section 2.** {standard} **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."
Insert: "Coordination SECTION. **Section 3. Coordination instruction.** If both House Bill No. 391 and [this act] are passed and approved, then [section 1(2)(b)(i)(C) of this act], amending 46-18-201, must read as follows:
"(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);""
Insert: "NEW SECTION. **Section 4. Applicability.** [This act] applies to crimes committed on or after [the effective date of this act]. "

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 559** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Theresa Manzella

And, that such amendments read:

1. Page 2, line 8.
Following: "acquittal,"
Insert: "or if the disclosure may be in the public interest,"

2. Page 2, line 16.
Following: "(A)"
Insert: "make reasonable efforts to"
Following: "to a"
Insert: "victim of the alleged offense and any"

3. Page 2, line 16.
Following: "with a"
Insert: "protected"

4. Page 2, line 25.
Strike: "60"
Insert: "30 calendar"

5. Page 4, line 7.
Following: "acquittal,"
Insert: "or if the disclosure may be in the public interest,"

6. Page 4, line 15.
Following: "(A)"
Insert: "make reasonable efforts to"
Following: "to a"
Insert: "victim of the alleged offense and any"

7. Page 4, line 15.
Following: "with a"

Committee Vote:
Yes 11, No 0
Fiscal Note Required X

HB0559001SC16510.slk

Insert: "protected"

8. Page 4, line 24.
Strike: "60"
Insert: "30 calendar"

- END -

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

HB 436 - Generally revise firearms laws - Rep. Scot Kerns (R)
HB 519 - Revise laws regarding parenting time - Rep. Katie Zolnikov (R)

by motion, on **Friday, April 9, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Secretary of the Senate)

2:45 / 4/9
(Time) (Date)

April 9, 2021 (2:23pm) Jacelyn Sterling, Secretary Phone: 444-7363

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO SB97 MOTION NO. _____

MOTION: _____ be adopted

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE_____ BILL NO HB 358 MOTION NO._____
MOTION: _____
be amended

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER	✓		
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS	✓		
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 436 MOTION NO. _____
MOTION: _____

table

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY		✓	
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH		✓	
SEN. BENNETT	✓		
SEN. MANZELLA	✓		
SEN. WEBBER	✓		
SEN. BROWN	✓		
SEN. FRIEDEL		✓	
SEN. GROSS	✓		
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4-9-2021 BILL NO HB 517 MOTION NO. _____

MOTION: _____

be concurred in

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 519 MOTION NO. _____
MOTION: _____

table

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH		✓	
SEN. BENNETT	✓		
SEN. MANZELLA		✓	
SEN. WEBBER	✓		
SEN. BROWN	✓		
SEN. FRIEDEL		✓	
SEN. GROSS	✓		
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 539 MOTION NO._____
MOTION: _____
amendment

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4-9-2021 BILL NO HB 337 MOTION NO. _____

MOTION: _____

be concurred in as amended

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 230 MOTION NO. _____
MOTION: _____

amendment 3.1

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 236 MOTION NO. _____
MOTION: _____

amendment .3.2

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 230 MOTION NO. _____
MOTION: _____

as amended 2x

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 481 MOTION NO. _____
MOTION: _____

amendment 481.2.1

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB 481 MOTION NO. _____
MOTION: _____

amendment 481.2.2

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/9/21 BILL NO HB481 MOTION NO. _____
MOTION: _____

be concurred in as amended twice

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

#1

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, April 9, 2021
SR 97 - Senate resolution authorizing intervention in SB 140 legal proceedings
Sponsor: **Sen. Cary Smith (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Brian Spaeth	Sierra Club MT			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#3 #2

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, April 9, 2021
HB 559 - Revise requirements for dissemination of confidential criminal justice info
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#1

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

(2)

Friday, April 9, 2021
HB 602 - Require warrant for search of consumer DNA database
Sponsor: **Rep. Mallerie Stromswold (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Patrick Webb	AFP-MT	X		
Katjana Stutzer	MontPIRG	X		
Sam Forstag	ACLU of MT	√		
MARK MURPHY	MARK MURPHY		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#4

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, April 9, 2021
HB 553 - Limit time of suspended sentences for felony convictions
Sponsor: **Rep. Jimmy Patelis (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Nanette Gilbertson	MCAA	✓		
Sam Forstag	ACLU-MT			
Terry Kriegel	AFP	X		
MARK MURPHY	SEIF			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: Chair Ryan Osmundson, on April 15, 2021 at 9:03 A.M., in Room 317 Capitol

ROLL CALL

Members Present:

Sen. Ryan Osmundson, Chair (R)
Sen. Mike Cuffe, Vice Chair (R)
Sen. Janet Ellis, Vice Chair (D)
Sen. Duane Ankney (R)
Sen. Kenneth Bogner (R)
Sen. Pat Flowers (D)
Sen. Carl Glimm (R)
Sen. David Howard (R)
Sen. Tom Jacobson (D)
Sen. Douglas (Doug) Kary (R)
Sen. Bob Keenan (R)
Sen. Mike Lang (R)
Sen. Ryan Lynch (D)
Sen. Mary McNally (D)
Sen. Shane A. Morigeau (D)
Sen. Daniel R. Salomon (R)
Sen. Cary Smith (R)
Sen. Jeffrey W. Welborn (R)

Members Present by Zoom Video Conference:

Sen. Ellie Boldman (D)

Members Excused: None

Members Absent: None

Staff Present: Prudence Gildroy, Committee Secretary
Julie Johnson, Legislative Branch
Heather Vande Sandt, Remote Meeting Coordinator
Kris Wilkinson, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 46, 4/14/2021; HB 277, 4/14/2021; HB 92, 4/12/2021; HB 497, 4/14/2021; HB 578, 4/12/2021; HB 553, 4/14/2021
Executive Action:	HB 46 Be Concurred In; HB 277 Be Concurred In; HB 92 Be Concurred In; HB 497 Be Concurred In; HB 528 Be Concurred In; HB 553 Be Concurred In; HB 115 Be Concurred In

09:03:45 Chair Osmundson

HEARING ON HB 46

Opening Statement by Sponsor:
09:05:32 Rep. David Bedey (R), HD 86, opened the hearing on HB46, Revise special education funding.

Proponents' Testimony:
09:07:14 Emily Dean, director of advocacy, Montana School Boards Association, Montana Public Education Center
09:08:41 Diane Fladmo, director of public policy, Montana Federation of Public Employees.
09:09:38 Kirk Miller, executive director, School Administrators of Montana
09:10:45 Dianne Burke, executive director, Montana Quality Education Coalition

Opponents' Testimony: None

Informational Testimony:
09:12:00 Paul Taylor, Office of Public Instruction

Questions from Committee Members and Responses:
09:12:28 Sen. Ellis
09:13:09 Rep. Bedey

Closing by Sponsor:
09:14:09 Rep. Bedey

HEARING ON HB 277

Opening Statement by Sponsor:
09:14:53 Rep. Bill Mercer (R), HD 46, opened the hearing on HB277, Provide for a state government performance and results act.

Proponents' Testimony: No

Opponents' Testimony: No

Informational Testimony: No

Questions from Committee Members and Responses:
09:18:52 Sen. Ankney
09:19:18 Rep. Mercer
09:19:42 Chair Osmundson
09:19:57 Rep. Mercer
09:21:30 Sen. Ellis
09:22:27 Sen. Smith
09:22:44 Chair Osmundson
09:23:03 Sen. Smith

Closing by Sponsor:
09:23:19 Rep. Mercer

HEARING ON HB 92

Opening Statement by Sponsor:
09:23:37 Rep. Kathy Kelker (D), HD 47, opened the hearing on HB92, Establish compensation program for wrongfully convicted individuals.

Proponents' Testimony:
09:25:20 Patrick Webb, Americans For Prosperity Montana (AFP-MT)
09:28:54 Amy Sings In The Timber, Montana Innocence Project

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
09:32:50 Sen. Ellis
09:33:14 Rep. Kelker
09:35:22 Sen. Ellis
09:36:02 Rep. Kelker
09:36:13 Mr. Webb, AFP-MT
09:37:24 Kris Wilkinson, Legislative Fiscal Division (LFD)
09:37:37 Chair Osmundson
09:37:45 Ms. Wilkinson, LFD
09:37:51 Chair Osmundson
09:37:57 Sen. Flowers
09:38:35 Rep. Kelker

09:38:48 Sen. Salomon joined the meeting.

09:39:45 Sen. Flowers
09:40:06 Rep. Kelker
09:40:53 Sen. Glimm
09:41:27 Rep. Kelker
09:42:44 Sen. Glimm
09:43:36 Rep. Kelker
09:44:07 Mr. Webb
09:44:39 SK Rossi, Montana Innocence Project

Closing by Sponsor:
09:46:13 Rep. Kelker

HEARING ON HB 497

Opening Statement by Sponsor:
09:49:03 Rep. Bill Mercer (R), HD 46, opened the hearing on HB497, Establish interim budget committees.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:
09:52:38 Amy Carlson, legislative analyst, Legislative Fiscal Division

Questions from Committee Members and Responses: None

Closing by Sponsor:
09:54:23 Rep. Mercer

HEARING ON HB 578

Opening Statement by Sponsor:
09:55:32 Rep. Terry Moore (R), HD 54, opened the hearing on HB578, Revise laws related to commitment of defendants.

Proponents' Testimony:
09:57:07 Aimee Grmoljez, City of Billings
09:59:21 Nanette Gilbertson, Montana County Attorneys' Association, Montana Peace Officers Association

Sen. Boldman joined the meeting.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:01:12 Sen. Ellis
10:01:42 Rep. Moore
10:02:26 Sen. Lynch
10:02:52 Rep. Moore

Closing by Sponsor:
10:03:46 Rep. Moore

10:04:42 Recess
10:21:58 Reconvene

Sen. Morigeau joined the meeting.

HEARING ON HB 553

Opening Statement by Sponsor:
10:22:09 Sen. Lynch (D), SD 37 opened the hearing on HB553, Limit time of suspended sentences for felony convictions, for Rep. Jimmy Patelis (R), HD 52.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:23:45 Sen. Keenan
10:24:13 Sen. Lynch
10:24:20 Sen. Keenan
10:24:25 Sen. Lynch

Closing by Sponsor:
10:25:34 Sen. Lynch

EXECUTIVE ACTION ON HB 46

10:27:14 **Motion:** Sen. Cuffe moved that **HB 46 BE CONCURRED IN**.

Discussion:
10:27:41 Sen. Keenan
10:28:00 Kris Wilkinson, Legislative Fiscal Division (LFD)
10:28:37 Sen. Salomon

10:29:10 **Vote:** Motion carried unanimously by voice vote. Sen. Salomon will carry the bill.

Sen. Boldman left the meeting.

EXECUTIVE ACTION ON HB 92

10:29:29 **Motion:** Sen. Cuffe moved that **HB 92 BE CONCURRED IN**.

Discussion:
10:29:50 Chair Osmundson

10:30:07 **Vote:** Motion carried 14-5 by roll call vote with Sen. Cuffe, Sen. Kary, Sen. Lang, Sen. Osmundson and Sen. C. Smith voting no. Sen. Boldman voted by proxy. Sen. Regier will carry the bill.

Sen. Boldman joined the meeting.

EXECUTIVE ACTION ON HB 277

10:31:24 **Motion/Vote:** Sen. Cuffe moved that **HB 277 BE CONCURRED IN**. Motion carried unanimously by voice vote. Sen. Bennett will carry the bill.

EXECUTIVE ACTION ON HB 497

10:31:39 **Motion:** Sen. Cuffe moved that **HB 497 BE CONCURRED IN**.

Discussion:
10:31:55 Sen. Flowers

10:32:00 Chair Osmundson

10:32:26 **Vote:** Motion carried unanimously by voice vote. Sen. Osmundson will carry the bill.

EXECUTIVE ACTION ON HB 553

10:32:32 **Motion/Vote:** Sen. Cuffe moved that **HB 553 BE CONCURRED IN**. Motion carried unanimously by voice vote. Sen. Sands will carry the bill.

EXECUTIVE ACTION ON HB 578

10:33:16 **Motion:** Sen. Cuffe moved that **HB 578 BE CONCURRED IN**.

Discussion:
10:34:09 Sen. McNally

10:34:21 **Vote:** Motion carried unanimously by voice vote. Sen. McGillvray will carry the bill.

EXECUTIVE ACTION ON HB 115

10:34:32 **Motion/Vote:** Sen. Howard moved that **HB 115 BE REMOVED FROM TABLE**. Motion carried 11-8 by roll call vote with Sen. Boldman, Sen. Ellis, Sen. Flowers, Sen. Jacobson, Sen. Lynch, Sen. McNally, Sen. Morigeau and Sen. Welborn voting no.

10:36:03 **Motion:** Sen. Howard moved that **HB 115 BE CONCURRED IN**.

Discussion:
10:36:39 Sen. Keenan
10:36:42 Chair Osmundson
10:38:25 Sen. Keenan
10:38:29 Sen. Lynch
10:38:37 Sen. Morigeau
10:39:07 Chair Osmundson
10:39:21 Kris Wilkinson, Legislative Fiscal Division
10:39:44 Chair Osmundson

10:39:48 **Vote:** Motion carried 12-7 by roll call vote with Sen. Boldman, Sen. Ellis, Sen. Flowers, Sen. Jacobson, Sen. Lynch, Sen. McNally and Sen. Morigeau voting no. Sen. Howard will carry the bill.

ADJOURNMENT

Adjournment: 10:40 A.M.

Prudence Gildroy, Secretary

pg

Additional Documents:

EXHIBIT(fcs72aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist: Susie Hamilton SHamilton@mt.gov

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE FINANCE AND CLAIMS COMMITTEE

Date: Thursday, April 15, 2021 **Time:** 9:03 A.M.
Place: Capitol **Room:** 317

BILLS and RESOLUTIONS HEARD:

HB 46 - Revise special education funding - Rep. David Bedey (R)
HB 277 - Provide for a state government performance and results act - Rep. Bill Mercer (R)
HB 92 - Establish compensation program for wrongfully convicted individuals - Rep. Kathy Kelker (D)
HB 497 - Establish interim budget committees - Rep. Bill Mercer (R)
HB 578 - Revise laws related to commitment of defendants - Rep. Terry Moore (R)
HB 553 - Limit time of suspended sentences for felony convictions - Rep. Jimmy Patelis (R)

EXECUTIVE ACTION TAKEN:

HB 46 Be Concurred In
HB 277 Be Concurred In
HB 92 Be Concurred In
HB 497 Be Concurred In
HB 528 Be Concurred In
HB 553 Be Concurred In
HB 115 Be Concurred In

Comments:

SEN. Ryan Osmundson, Chair

MONTANA STATE SENATE
Roll Call
FINANCE AND CLAIMS COMMITTEE

DATE: April 15, 2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR CUFFE	✓	
VICE CHAIR ELLIS	✓	
SEN. ANKNEY	✓	
SEN. BOGNER	✓	
SEN. BOLDMAN	✓	
SEN. FLOWERS	✓	
SEN. GLIMM	✓	
SEN. HOWARD	✓	
SEN. JACOBSON	✓	
SEN. KARY	✓	
SEN. KEENAN	✓	
SEN. LANG	✓	
SEN. LYNCH	✓	
SEN. MCNALLY	✓	
SEN. MORIGEAU	✓	
SEN. SALOMON	✓	
SEN. SMITH	✓	
SEN. WELBORN	✓	
CHAIRMAN OSMUNDSON	✓	
19 Committee Members		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 46** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Daniel Salomon

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required X

HB0046004SC12559.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 92** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Keith Regier

- END -

Committee Vote:
Yes 14, No 5
Fiscal Note Required _X_

HB0092002SC13689.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 277** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Bryce Bennett

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required _X_

HB0277002SC13032.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 497** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Ryan Osmundson

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required X

HB0497002SC12599.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 553** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Diane Sands

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required X

HB0553002SC13941.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 578** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator Tom McGillvray

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required _X_

HB0578002SC12922.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** report that **House Bill 115** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Ryan Osmundson, Chair

To be carried by Senator David Howard

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required X

HB0115002SC13679.slk

MONTANA STATE SENATE
Roll Call Vote
FINANCE AND CLAIMS COMMITTEE

DATE April 15, 2021 BILL NO HB92 MOTION NO. _____
MOTION: Be Concurred In

NAME	AYE	NO	Proxy
VICE CHAIR CUFFE		✓	
VICE CHAIR ELLIS	✓		
SEN. ANKNEY	✓		
SEN. BOGNER	✓		
SEN. GLIMM	✓		
SEN. HOWARD	✓		
SEN. KARY		✓	
SEN. KEENAN	✓		
SEN. LANG		✓	
SEN. SALOMON	✓		
SEN. SMITH		✓	
SEN. WELBORN	✓		
SEN. BOLDMAN	✓		✓
SEN. FLOWERS	✓		
SEN. JACOBSON	✓		
SEN. MORIGEAU	✓		
SEN. MCNALLY	✓		
SEN. LYNCH	✓		
CHAIRMAN OSMUNDSON		✓	
19 COMMITTEE MEMBERS	14	5	

MONTANA STATE SENATE
Roll Call Vote
FINANCE AND CLAIMS COMMITTEE

DATE April 15, 2021 BILL NO HB 115 MOTION NO. _____
MOTION: Be taken off the table

NAME	AYE	NO	Proxy
VICE CHAIR CUFFE	✓		
VICE CHAIR ELLIS		✓	
SEN. ANKNEY	✓		
SEN. BOGNER	✓		
SEN. GLIMM	✓		
SEN. HOWARD	✓		
SEN. KARY	✓		
SEN. KEENAN	✓		
SEN. LANG	✓		
SEN. SALOMON	✓		
SEN. SMITH	✓		
SEN. WELBORN		✓	
SEN. BOLDMAN		✓	
SEN. FLOWERS		✓	
SEN. JACOBSON		✓	
SEN. MORIGEAU		✓	
SEN. MCNALLY		✓	
SEN. LYNCH		✓	
CHAIRMAN OSMUNDSON	✓		
19 COMMITTEE MEMBERS	11	8	

MONTANA STATE SENATE
Roll Call Vote
FINANCE AND CLAIMS COMMITTEE

DATE 4/15/21 BILL NO HB115 MOTION NO. _____
MOTION: do Pass

NAME	AYE	NO	Proxy
VICE CHAIR CUFFE	✓		
VICE CHAIR ELLIS		✓	
SEN. ANKNEY	✓		
SEN. BOGNER	✓		
SEN. GLIMM	✓		
SEN. HOWARD	✓		
SEN. KARY	✓		
SEN. KEENAN	✓		
SEN. LANG	✓		
SEN. SALOMON	✓		
SEN. SMITH	✓		
SEN. WELBORN	✓		
SEN. BOLDMAN		✓	
SEN. FLOWERS		✓	
SEN. JACOBSON		✓	
SEN. MORIGEAU		✓	
SEN. MCNALLY		✓	
SEN. LYNCH		✓	
CHAIRMAN OSMUNDSON	✓		
19 COMMITTEE MEMBERS	12	7	

SENATE PROXY

I, Senator Ellie Boldman, hereby authorize Senator Janet Ellis to vote my proxy before the Senate Finance and Claims meeting held on April 15, 2021.

Ellie Boldman
Senator Signature

4/15/21
Date

Said authorization is as follows: *(mark only one)*

- [x] All votes, including amendments.
- [ ] All votes as directed below on the listed bills, and all other votes.
- [ ] Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 92	✓	

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 277 - Provide for a state government performance and results act
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 92 - Establish compensation program for wrongfully convicted individuals
Sponsor: **Rep. Kathy Kelker (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Patrick Webb	AFP-MT	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 46 - Revise special education funding
Sponsor: **Rep. David Bedey (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 497 - Establish interim budget committees
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 578 - Revise laws related to commitment of defendants
Sponsor: **Rep. Terry Moore (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Aimee Grmoljez	City of Billings	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FINANCE AND CLAIMS COMMITTEE

Thursday, April 15, 2021
HB 553 - Limit time of suspended sentences for felony convictions
Sponsor: **Rep. Jimmy Patelis (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Patrick Webb	AFP-MT	X		
Sam Forstag	ACLU of Montana	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Senate Finance and Claims Committe Testimony Requests Meeting: 04/15/2021					
Bill	**Name**	**Position**	**Location**	**Email**	**Affiliation**
HB-92	Amy Sings In The Timber	Proponent	Missoula	amy@mtinnocenceproject.org	Montana Innocense Project
HB-46	Diane Fladmo	Proponent	Helena	dfladmo@mfpe.org	Montana Federation of Public Employees
HB-46	Emily Dean	Proponent	Helena	edean@mtsba.org	MTSBA & Montana Public Education Center (MT-PEC)